No. 5982

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

GENERAL INSURANCE COMPANY OF AMERICA, a Corporation,

Appellant

vs.

ROSE M. ALLEN,

Appellee

Transcript of the Record

On Appeal from the District Court of the United States for the District of Idaho Southern Division

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Transcript of the Record

On Appeal from the District Court of the United States for the District of Idaho Southern Division

NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

JAMES R. BOTHWELL
W. ORR CHAPMAN,
Twin Falls, Idaho
Attorneys for Appellant.

W. D. GILLIS,
Boise, Idaho
JOHN W. GRAHAM,
Twin Falls, Idaho
Attorneys for Appellee.

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Witnesses for Plaintiff

Witnesses for Defendant

In the District Court of the Eleventh Judicial District of the State of Idaho, in and for Twin Falls County.

ROSE M. ALLEN,

Plaintiff,

vs.

GENERAL INSURANCE COMPANY OF AMERICA, a Corporation,

Defendant.

No. 7428

COMPLAINT

Comes now the plaintiff and for her cause of action against the above named defendant, complains and alleges:

I. That the defendant, the General Insurance Company of America, is a foreign corporation, with its principal place of business at Seattle, Washington, and is engaged in the business, in the State of Idaho—of insuring property against loss by fire.

II. That on the 20th day of September 1924, and at all times since that date, R. A. Reynolds and C. L. Reynolds, were and now are the fee title owners of the following described real property and appurtenances located at Filer, Idaho, and described as follows: Lots Twenty-eight (28) and Twenty-nine of Block Fourteen (14) of the final

and Amended Plat of the Townsite of Filer, Idaho, as the plat thereof is of record in the Recorder's Office of Twin Falls County, Idaho. That the improvements upon said lots as above described, were on the date above mentioned, a two-story, brick building. That the said property is more generally described as that property situate on the Northwest corner of Main Street and Park Avenue, Sanborn Fire Map Sheet 5, Block 29, Street No. 204, Filer, Idaho.

III. That on the 20th day of September, 1924, at Filer, Idaho in consideration of the payment by the said R. A. Reynolds and C. L. Reynolds, to the defendant, of the premium demanded by it, said defendant, by its agent, Arthur E. Anderson, duly authorized thereto, made its policy of insurance, in writing a copy of which is annexed hereto, marked "Exhibit A" and by this reference made a part hereof. That said policy was numbered by said defendant as ID601926. That said policy was for the term of five years from said 20th day of September, 1924, and in the amount of $10,000.00.

IV. That on the 29th day of August, 1928, at about the hour of 2 o'clock A. M. said building above described was totally destroyed by fire.

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That said building so insured by the defendant at the time of said fire was of the value of about $25,000.00 and that the loss and damage sustained

by the plaintiff herein by reason of such destruction was the sum of $10,000.00, the full amount of said policy.

V. That previous to the 20th day of September, 1924, said insured, towit: R. A. Reynolds and C. L. Reynolds, made, executed and delivered to this plaintiff, their certain mortgage in writing on the above described premises to secure the sum of $12,647.00. That said R. A. Reynolds and C. L. Reynolds turned said policy over to this plaintiff in further security of the debt secured by said mortgage, and thereupon defendant at the request of plaintiff and said insured, R. A. Reynolds and C. L. Reynolds, attached to said policy, what is known as "Standard Forms Bureau Form No. 371 of date of form July 1917" which contract form is entitled "Mortgage Clause with Full Contribution" and provides that loss or damage if any under this policy, on building only, shall be payable to Rosa M. Allen, the mortgagee, the plaintiff herein. That a copy of said form is a part of "Exhibit A" annexed hereto, and said contract form is by this reference made a part of this paragraph.

VI. That said mortgage and debt is secured thereby is wholly unpaid and unsatisfied, except that there has been paid upon said mortgage the sum of $2313.20, leaving a balance due and owing thereon in the sum of $10,313.80.

VII. That this plaintiff by the total destruction of said building by said fire lost all security for her said debt and mortgage, and said real property is now of no value whatsoever.

VIII. That under the terms of said contract form referred to in paragraph V. hereof it is provided that said defendant might cancel said policy as to the said insured, R. A. Reynolds and C. L. Reynolds but that it shall remain in full force for the benefit of said mortgagee for ten days after notice to the mortgagee that it desired to cancel said policy. That no notice of cancellation, or other notice of any kind, was ever mailed, delivered or served upon this plaintiff. That plaintiff had no knowledge of any kind of any cancellation, if any was made, as to said R. A. Reynolds and C. L. Reynolds and plaintiff alleges no cancellation of any kind was made as to R. A. Reynolds and C. L. Reynolds. That plaintiff at all times stood ready to pay on demand, any premium of any kind upon said policy, but no demand of any kind was ever made therefor upon this plaintiff.

IX. That on September 20th, 1928, plaintiff advised defendant that she desired to make proof of loss and asked that an adjuster be sent to assist in making proof or that forms be sent plaintiff that she might make such proof, and supply the same to defendant.

That said defendant although it advised that it received said notice and request, failed to send such adjuster or supply said forms for making proof of loss, and thereafter and on the 11th day of October, 1928, this plaintiff furnished defendant proof of loss, and duly performed in all *respectis* all the conditions of said policy on her part. That under proof of loss, said plaintiff's loss by said fire, was shown to be and is the sum of $10,000.00.

X. That the defendant has not paid the said loss or any part thereof, and fails, neglects and refuses so to do, although demand has been made therefor.

XI. That plaintiff is entitled to recover interest on said sum of $10,000.00 at the legal rate of 7% per annum from the 11th day of October, 1928, until paid.

WHEREFORE Plaintiff demands judgment against said defendant for the principal sum of $10,000.00 together with interest thereon from the 11th day of October, 1928 until paid, together with her costs herein expended.

W. D. GILLIS
Attorney for Plaintiff
Residing at Filer, Idaho.

(Duly verified)

Filed Dec. 12, 1928.
Transcript on removal filed Jany 28, 1929.

Exhibit "A"

STANDARD FIRE INSURANCE POLICY—
STOCK COMPANY
(Participating Plan)
No. ID601926

GENERAL INSURANCE COMPANY
OF
AMERICA.
Seattle, Washington.

Amount $10,000.00 Rate 1.63 Premium $130.40

IN CONSIDERATION of the stipulations herein named and of One Hundred Thirty and 40/100 ------ Dollars First Annual Premium, and by the payment of the then current annual premium to this Company, at or before 12 o'clock noon, on or before the 20th day of September in every year, renewing from year to year within said term, does insure C. L. and R. A. Reynolds for the term of five years from the 20th day of September, 1924, at noon, to the 20th day of September, 1929, at noon, against all direct loss or damage by fire except as hereinafter provided,

TO AN AMOUNT NOT EXCEEDING Ten Thousand and no/100 --- Dollars, on the following described property, while located and contained as herein described, and no else where, to-wit:

This Policy is made and accepted subject to the

foregoing stipulations and conditions, and to the following stipulations and conditions printed on back hereof, which are hereby specially referred to and made a part of this Policy, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto; and no officer, agent or other representative of this Company shall have power to waive any provision or condition of this Policy except such as by the terms of this Policy may be the subject of agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the insured unless so written or attached.

Provisions Required by Law to be Stated in This Policy. This Policy is in a Stock Corporation.

The Board of Directors, in accordance with Section 7 of the Company's Articles of Incorporation, may from time to time distribute equitably to the holders of the policies issued by said company such sums out of its earnings as in its judgment is proper.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly

authorized Agent of the Company at Filer, Idaho.

Frank B. Martin
Secretary

H. W. Dent,
President.

Countersigned at Filer, Idaho,
this 20th day of September, 1924.

Arthur E. Anderson,
Agent.

Arthur E. Anderson.

Form 102A-5M-10-23

1. This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part of the articles at

such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance whether valid or not on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering, or

repairing the within described premises for more than fifteen days at any one time; or, if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contract notwithstanding) there be kept used, or allowed on the above described premises, benzine, benzole, d y n a m i t e, ether, fireworks, gasoline, greek fire, gunpowder exceeding twenty-five pounds in quantity, naptha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law but in quantities not

exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance of not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises, or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or

office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance, no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be cancelled at any time at the request of the insured; or by the company by giving five days notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actu-

ally paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is cancelled by this company by giving notice it shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall for the ensuing five days only cover the property so removed in the new location; if removed to more than one location such excess of this policy shall cover therein for such five days in the proportion that the value in any one of such new location bears to the value in all such new locations; but this company shall not, in any case of removal whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall

bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur, the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required furnish a certificate of the magistrate or notary public

(not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appaise the loss, stating separately sound value and damage and failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected

by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture therof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by an expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, in payment of the loss be subrogated to the extent

of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

STANDARD FORMS BUREAU FORM 76

BUILDING FORM (MERCANTILE)

On the following described property, all situate on the northwest corner of Main Street and Park Avenue, Sanborn Fire

Map Sheet 5, Block 29, Street No. 204, Filer, Idaho.

1. $10,000.00 On the two story comp. roof brick building and its additions (if any) of like construction communicating and in contract therewith, including foundations, sidewalks, plumbing, electrical wiring and stationary heating and lighting apparatus and fixtures; also all permanent fixtures, awnings, wall and ceiling decorations and frescoes, stationary scales and elevators, belonging to and constituting a part of said building, only while occupied for hardware & implement store, and dance hall purposes.

2. $ nil On.....

3. $ nil On.....

No insurance attached under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Other insurance permitted.

Loss, if any, subject however to all the terms and conditions of this policy, payable to assured.

"Tenants' Improvements" separately insured for a specific amount under this, or any other policy,

are not covered by this policy except for such specific amount, if any, named herein.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. ID-601926 of the General Insurance Co Name of Company.

Agency at Filer, Idaho Dated September 20th, 1924.

INSURANCE MAP

Trade Mark
STANDARD

Sheet 5
Block 20
No. 204

ARTHUR E. ANDERSON
Agent,
Arthur E. Anderson.

PROVISIONS REFERRED TO IN AND MADE A PART OF THIS RIDER (NO. 76)

"Vacancy", If the building described hereunder is located within the incorporated limits of a city or town, permission is hereby granted for same to remain vacant or unoccupied without limit of time.

"Permits". Permission granted to make alteration or repairs to the above described building without limit of time, and to build additions, and if of like construction and communicating and in con-

tact therewith, this policy shall cover on same under its respective items pertaining thereto; permission also granted to do such work in said building as the nature of the occpancy may require to work at any and all times; and, when not in violation of law or ordinance, to generate illuminating gas or vapor, and to keep and use the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it being warranted by insured that no artificial light (other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such breach. But notwithstanding anything herein contained, the use, keeping allowing, or storing on the within described premises of dynamite, fireworks, Greek fire, gunpowder in excess of fifty pounds, nitro glycerine or other explosive is prohibited and shall wholly suspend this policy during the period such use, keeping, allowing or storing shall continue unless a specific permit therefor is attached to this policy.

"Lightning Clause" This policy shall cover any direct loss or damage by lightning (Meaning thereby the commonly accepted use of the term "lightning" and in case to include loss or damage by cyclone, tornado or windstorm) not exceeding the sum

insured nor the interest of the insured in the property, and subject in all other *respectis* to the terms and conditions of this policy; Provided however, that if there shall be any other insurance on said property this company shall be liable only pro rata with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not,

"Electrical Exemption Clause." If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this insurance shall not cover any immediate loss or damage to d y n a m o s, exciters, lamps, motors, switches, or any other apparatus for generating, utilizing, testing, regulating or distributing electricity, caused directly by electric currents therein whether artificial or natural.

STANDARD FORMS BUREAU FORM 371.

MORTGAGEE CLAUSE WITH FULL CONTRIBUTION

(To be attached only to policies covering buildings)

Loss or damage, if any, under this policy, on building only shall be payable to Rose M. Allen Mortgagee (or Trustee), as interest may appear. Subject to all the terms and conditions hereinafter set forth in this rider, this insurance, as to the in-

terest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy.

Condition One.—In case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Condition Two.—The mortgagee (or trustee) shall notify this company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee), and unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

Condition Three.—This company reserves the right to cancel at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation, and shall then cease;

and this company shall have the right, on like notice to cancel this agreement.

Condition Four.—In case of any other insurance upon the within described property, this company shall not be liable under this policy for a greater proportion of any loss or damage sustained than the sum hereby insured bears to the whole amount of insurance on said property, issued to or held by any party or parties having an insurable interest therein, whether as owner, mortgagee or otherwise.

Condition Five.—Whenever this company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of her claim.

Attached to Policy No. ID-610926 of the General Insurance Company. Name of Company.

Issued to C. L. and R. A. Reynolds.

Agency at Filer, Idaho Dated, September 20th, 1924.

Trade Mark

STANDARD

371

July 1917.

ARTHUR E. ANDERSON,
Agent.

(Title of Court and Cause)

No. 7428

DEMURRER

Comes now the defendant above named and demurs to the complaint of the plaintiff on file herein and for cause of demurrer alleges:

I. That said complaint fails to state facts sufficient to constitute a cause of action against this defendant.

JAMES R. BOTHWELL
W. ORR CHAPMAN
Attorneys for defendant
Residing at Twin Falls, Idaho.

Filed Dec. 31, 1928.

(Title of Court and Cause)

ORDER OVERRULING DEMURRER

Minute entry of February 11, 1929.

The defendant's demurrer to the complaint was argued before the Court by Messrs. Bothwell and Chapman, defendant's counsel, and John W. Graham Esquire, plaintiff's counsel. After hearing argument, the plaintiff was granted leave to amend the complaint by inserting a paragraph to be designated paragraph number four and a half of the complaint, and the demurrer was thereupon overruled.

(Title of Court and Cause)

STIPULATION WAIVING JURY

Come now the parties above named by and through their respective counsel, and hereby waive a jury for the trial of said above entitled cause and consent to said cause being tried by the court without a jury.

Dated this 28th day of February, 1929.

W. D. GILLIS &
JOHN W. GRAHAM
Attorneys for Plaintiff

JAMES K. BOTHWELL
W. ORR CHAPMAN
Attorney for Defendant

Filed March 1, 1929.

(Title of Court and Cause)

ANSWER

Comes now the defendant above named and answering the complaint of the plaintiff on file herein admits, denies and alleges:

I

Denies each and every of the allegations of the plaintiffs complaint save and except only as specifically admitted.

II

Answering Paragraph I of said complaint defendant admits the allegations therein contained.

III

Answering Paragraph III of plaintiffs complaint defendant denies that said policy therein referred to and mentioned was for the term of five years from the said 20th day of September 1924, and in this connection alleges the fact to be that said policy of insurance was for and covered insurance from the 20th day of September 1924, for one year to-wit, to and until at or before 12 o'clock noon on or

before the 20th day of September 1925; and that at or before 12 o'clock noon on or before the 20th day of September 1925, said policy of insurance was subject to renewal only by the payment of the then current annual premium to defendant, and to continue and to extend for five years from the 20th day of September 1924, by renewal from year to year within said term by the payment of the then current annual premium to defendant at or before 12 o'clock noon on or before the 20th day of September in every year as aforesaid and not otherwise.

IV

Admits that said R. A. Reynolds and C. L. Reynolds turned said policy of insurance over to this plaintiff for the purposes alleged in Paragraph V of said complaint.

WHEREFORE, and etc.

Further answering plaintiffs complaint and by way of separate answer thereto defendant alleges:

I

That on the 20th day of September 1926, at or before 12 o'clock noon of said day the said C. L. and R. A. Reynolds so acting for themselves and for plaintiff herein, failed, refused, and neglected to pay the then current annual premium to defendant as provided in and by the terms and provisions of the policy of insurance mentioned and referred to in plaintiffs complaint.

II

That thereafter, to-wit, on or about the 4th day of October 1926, the said C. L. and R. A. Reynolds acting as aforesaid stated to and informed the agent of the defendant at Filer, Idaho, that they, the said C. L. and R. A. Reynolds, had replaced said insurance by a policy of insurance procured from the Hardware Dealers Mutual Insurance Company and that they, the said C. L. and R. A. Reynolds, then and there acting for themselves and for the plaintiff herein delivered and surrendered the policy of insurance mentioned and referred to in plaintiffs said complaint to defendants said agent at Filer, Idaho, to be cancelled and, that pursuant to the request and directions of the said C. L. and R. A. Reynolds, acting as aforesaid, said policy of insurance was thereupon duly cancelled.

III

That by reason of the facts aforesaid, said policy of insurance became null and void as of 12 o'clock noon on the 20th day of September 1926, and that the same ceased, for all purposes, to be a binding obligation or to create any liability whatsoever upon the defendant herein, since the 4th day of October 1926, and that said policy of insurance was not in force or effect at the time of the fire and loss complained of in plaintiffs complaint.

IV

That by reason of the foregoing facts plaintiff

herein is now estopped from claiming a recovery against defendant.

WHEREFORE, defendant having fully answered plaintiffs complaint herein prays judgment that plaintiff take nothing by reason of her said complaint and that it have and recover its costs and disbursements in this behalf incurred and expended.

JAMES R. BOTHWELL
W. ORR CHAPMAN
Attorneys for Defendant,
Residing at Twin Falls, Idaho

Filed March 1, 1929.

(Title of Court and Cause)

MEMORANDUM OPINION

July 1, 1929

W. D. Gillis and John W. Graham, Attorneys for Plaintiff.

Bothwell & Chapman, Attorneys for Defendant.

CAVANAH, DISTRICT JUDGE:

The question arising upon the record is whether the plaintiff, as mortgagee, is entitled to recover upon a policy of fire insurance issued by the defendant on September 20, 1924, in the amount of

$10,000, covering a two-story brick building, situated at Filer, Idaho, after the same had been destroyed by fire. The owner of the premises, previous to the execution of the policy, made a mortgage to plaintiff securing the balance remaining unpaid of $12,647.00, and delivered the policy to plaintiff as further security for the debt secured by the mortgage. The defendant and the insured attached to the policy the standard form known as "mortgage clause with full contribution" executed by defendant, which provides that loss or damage under the policy shall be payable to the plaintiff, the mortgagee. On August 29, 1928, the building covered by the policy was totally destroyed by fire. At the time of the fire there was a balance of $10,313.80 due on the mortgage, and in due time plaintiff made proof of loss in the sum of $10,000. The defendant denied liability, and this action was brought to recover the full amount of the policy.

There seems to be no question under the evidence but that the amount of damages sustained by the fire exceeded the full face of the policy.

The defendant defends upon the ground that the policy became null and void as of 12:00 o'clock noon of September 20, 1926, and from that time ceased to be in force for the reason that the mortgagors, Reynolds, acting for themselves and for plaintiff, failed to pay the then current annual premium to defendant as provided in the policy, and that about

October 4, 1926, the Reynolds informed the agent of the defendant that they had replaced the insurance by a policy procured from another company, and at the time while acting for themselves and for plaintiff, delivered and surrendered the policy to the defendant to be cancelled, which was done.

The provision of the mortgage clause which is pertinent here as providing for loss or damage to be paid to the plaintiff, provides that the interest of the mortgagee in the insurance shall not be invalidated by any act or negligence of the mortgagor, or owner of the premises, and in case of such neglect of the owner or mortgagor to pay any premium due under the policy, the mortgagee, shall, on demand, pay the same, and that the defendant company reserves the right to cancel the policy at any time as provided by its terms, but it shall continue in force for the benefit of the mortgagee for ten days after notice to the mortgagee of such cancellation.

The controlling questions would seem to be, was R. A. Reynolds, one of the mortgagors, after the clause was attached to the policy, authorized to cancel the policy on October 4, 1926, and if not was it a five-year policy, or a policy for one year to be renewed only upon payment of premium in the manner provided in the mortgage clause?

A review of the testimony discloses that in April, 1924, the time when plaintiff left Filer, Idaho, for

California, where she remained until after the property was destroyed by fire, the premises were insured, and before leaving Reynolds agreed with her to carry the insurance on the building at all times for the amount of $10,000. The policy then in force expired April 20, 1924, and Reynolds at that time took out the policy in question, and paid the annual premium until Sept. 20, 1926, and the defendant company attached thereto the mortgage clause. No demand was ever made on plaintiff to pay the premium becoming due on Sept. 20, 1926, or any premium thereafter, or notice given to her that the premiums had not been paid or that the policy had been cancelled by the defendant. At the time the policy was written and the mortgage clause attached, Reynolds requested the agent of the defendant to place it in the safety deposit box of plaintiff at the First National Bank of Filer, which Reynolds says the agent then agreed to do. The policy was not taken to the bank, but was thereafter found in the possession of the agent of the defendant, marked "cancelled." There is some testimony that the policy was secured from Reynolds, and in response to a letter of Sept. 21, 1926, of the agent of the defendant, enclosing a renewal certificate of the policy and requesting payment of the premium then due, he stated that the policy had been placed "by Hardware Mutual" and to cancel it, and that there was found in the office of the agent of the defendant a record reciting that the policy was cancelled October

4, 1926, but says that when he wrote the response he had in mind another policy. It is clear that the relation existing between plaintiff and Reynolds was that of mortgagor and mortgagee, with the understanding that Reynolds would carry the insurance on the building at all times, and the defendant had knowledge of that fact, as Reynolds paid the first two years' annual premiums and requested the mortgage clause to be attached to the policy, which informed the defendant that she held a mortgage on the premises, and in case of cancellation of the policy by reason of non-payment of premium, or otherwise, by the mortgagor, she should be notified and given time to protect her security with insurance as provided in the mortgage clause.

The first conclusion that arises from the dealings between the plaintiff and Reynolds is that he, as mortgagor, arranged with the defendant for the insuring of the premises, with no authority given to him to cancel the policy. The character of the agency, if any existed, is a disputed issue of fact, and presents the question as to whether the scope of authority conferred upon Reynolds was large enough to embrace all purposes connected with the placing of the amount of insurance. As has been said, we have here a situation where Reynolds, the mortgagor, had secured the insurance from the defendant with the mortgage clause attached to the policy for the protection of plaintiff's mortgage, and when that was done the defendant company agreed,

by attaching the mortgage clause, to deal with her as mortgagee in the manner provided in the mortgage clause before the policy could be cancelled or forfeited. The evidence indicates the absence of any desire upon the plaintiff's part to empower Reynolds by his voluntary act to create a situation giving him authority to cancel the insurance, but merely requested that the property already insured be kept insured. The mere fact that Reynolds may have had possession of the policy and requested its cancellation would not be sufficient to constitute authority from the plaintiff to cancel the policy, in the face of the provision in the mortgage clause requiring the company to give the mortgagee notice of such cancellation, which was intended to guard against such act of the mortgagor and for the protection of the mortgagee so that she could keep the property insured for the protection of her loan; otherwise the provision in the mortgage clause requiring the insurer to deal with the mortgagee would be of no avail. The neglect and acts of the morgtagor and the insurer left the plaintiff without knowledge of the cancellation of the policy and unprotected, which the defendant had expressly agreed not to do by the provision in the mortgage clause. The mortgage clause became a separate contract between the plaintiff and the defendant, and she having a large loan on the property was entitled to have the insurer comply with its terms. So I am unable to find from the evidence sufficient testimony

to convince me that the plaintiff authorized Reynolds, the mortgagor, to act for her in cancelling the policy, even if he did so, or that the acts of Reynolds were sufficient to bind her in that regard. The mere fact that the mortgagor agrees to insure the mortgaged premises, and thereafter directs the insurer to cancel the policy, in face of the provision contained in the mortgage clause requiring the insurer to notify the mortgagee of any cancellation or default in payment of premium, does not grant him authority to cancel it, unless that authority is plainly and unequivocally conferred or is waived by the mortgagee. The authority of the agent is determined by the terms of the request made by the principal. A case analogous to the present one is City of New York Ins. Co. v. Jordan, et al., 284 F. 420, where the court said (syallabus): "An agent to procure insurance is not authorized to cancel it unless that authority is plainly conferred, and it is not plainly conferred by a request by the owner of property already insured that it be kept insured and to keep him insured at any time any company cancelled a policy." It is now settled that "an agent to procure insurance is not from that engagement alone authorized to effect a cancellation of the policy."—Michelson v. Franklin Fire Insurance Co., 147 N. E. 851; McDonald v. North River Insurance Co., 36 Ida. 638; Lauman v. Concordia Fire Insurance Co., 195 Pac. 951. Nor is the mortgagor who was to carry insurance at his expense under an

agreement between him and the mortgagee authorized to cancel it or the insurer to declare it cancelled without giving the mortgagee notice and demanding payment of the premium as provided in the mortgage clause, for if such were not the case the mortgage clause would be of no protection to the mortgagee against the negligent acts of the mortgagor. The phrase "to carry insurance at all times on the premises by the mortgagor" means nothing more than to secure insurance, and does not carry with it the general authority sometimes granted to an agent or broker to do everything necessary to effect the insurance and terminate it.

The objection that the plaintiff should not recover because the policy is one for one year with the privilege of continuing the insurance from year to year during the term of five years may be disposed of briefly. It is urged that by that provision of the policy the company agreed to insure the applicant for a term of five years from year to year, and in such case the option is left with the insured as to whether he wishes to continue or renew the policy or withdraw. The essential provision of the policy necessary to a consideration of this question reads as follows:

> "Amount $10,000.00 Rate $1.68 Premium $130.40
>
> IN CONSIDERATION of the stipulations herein named and of One Hundred Thirty and

> 40/100 Dollars First Annual Premium, and by the payment of the then current annual premium to this Company, at or before 12 o'clock noon, on or before the 20th day of September in every year, renewing from year to year within said term, does insure C. L. and R. A. Reynolds for the term of five years from the 20th day of September, 1924, at noon, to the 20th day of September, 1929, at noon, against all direct loss or damage by fire except as hereinafter provided. * * * * *"*

It seems clear by the above provision that the policy was a five year term policy for $10,000, payable upon loss or damage by fire. The premium was payable annually in advance. The first premium of $130.00 was paid for the year commencing Sept. 20, 1924, and for subsequent years to Sept. 20, 1926. The expression in the policy "does insure C. L. and R. A. Reynolds for the term of five years from the 20th day of September, 1924, at noon, to the 20th day of September, 1929, at noon" makes it clear that the policy is one for a term of five years and continues in force during that period, provided the annual premiums are paid in advance at or before twelve o'clock noon of September 20th in each year. If the insured chooses to pay the premium each year in advance, the company was obligated to carry the insurance for a term of five years, and it was only subject to termination if the annual premium was

not so paid. Millar v. West. Union Life Inst. Co., (Wash) 180 Pac. 488.

This construction was no doubt the intention of the parties, as we find indorsed by the company on that part of the original policy produced, "Expires Sep. 20, 1929," and at the top of the second page of the agent's record, Exhibit "3", in a summary of the contents of the policy, the language "Term five years. Effective Sept. 20, 1924." The provisions of this policy are similar to the provisions found in life insurance policies, and it is generally held as to those policies that where a term is expressed for life or a definite number of years the policy is a continuing contract for the term therein expressed, subject only to forfeiture for non-payment of premiums. In the case of McMasters v. New York Life Ins. Co., 78 F. 33, the court said: "A life policy, delivered upon payment of the first year's premiums, is a continuing contract for the life of the insured, subject to be forfeited for non-payment of premiums, and not merely a contract for a year, renewable by payment of subsequent premiums."

There does not seem to be any ambiguity in the language contained in this policy, as it seems clearly to convey the idea that the parties intended the policy to be for a term of five years and to remain in force during that period as long as the annual premiums are paid in advance as provided therein.

A liberal construction should be placed on contracts of insurance to uphold them, as they are prepared by the insurer and the conditions contained in them which create forfeitures will be construed most strongly against the insurer. Haas v. Mutual Life Ins. Co., 121 N. W. 996. The payment of the annual premium is only a condition subsequent to the continuation of the policy, and the non-performance of which may incur a forfeiture of the policy or may not, according to the circumstances, and it is always open for the insured to show a course of conduct on the part of the insurer which gave the insured reasonable ground to infer that a forfeiture would not be exacted. Thompson v. Insurance Co., 140 U. S. 252. So recognizing this principle the court should look further than the provisions of the policy to ascertain if the insurer has by its conduct permitted the mortgagee to pay the premium upon demand and notice, if default is had by the insured, and if so such contract or course of conduct should be considered, together with the original policy, in order to determine if the policy was at the time claimed forfeited for non-payment of premium. As has been said, when the policy was issued by the company a mortgage clause was attached, executed by the company, and was made a separate contract with the plaintiff mortgagee to the effect that loss or damage, if any, under the policy, shall be paid to the plaintiff mortgagee as her interest may appear, and the policy shall not be invalidated by any

act or neglect of the mortgagor, and in case the mortgagor shall neglect to pay any premium due under the policy the mortgagee shall, on demand, pay the same, and the company reserves the right to cancel the policy at any time as provided by its terms, and in such case it shall continue in force for the benefit only of the mortgagee for ten days after notice to the mortgagee of such cancellation, and shall then cease.

These provisions of the mortgage clause of the contract, as we have seen, were not complied with by the company. There was no notice given to plaintiff of the neglect of the mortgagor to pay the premiums, or demand made upon her by the company to pay the same, or the ten days notice required to be given to her for the cancellation of the policy. In fact, she being in California at the time of the default in payment of the premiums had no knowledge of it, or that the policy was cancelled by the company, until after the property was destroyed by fire when she was then informed for the first time. She had a right to assume that under the provisions of the contract she had with the company the premiums had all been paid promptly and no cancellation was claimed by the company. Had the company complied with these terms of the mortgage clause contract, she could have protected her loan by either acquiring the mortgagor to secure other insurance, or done so herself. That was the purpose of the mortgage clause contract. The company

failing to so comply with its contract with her becomes liable under the policy for the amount of the loss and damage occasioned by the fire in the sum of $10,000 principal, and interest thereon from the date of its denial of liability, October 16, 1928. Intermountain Ass'n. of Credit Men v. Milwaukee Mechanics Ins. Co., 44 Ida. 491.

Accordingly judgment, with costs, may be entered for plaintiff.
Filed July 1, 1929.

(Title of Court and Cause)

JUDGMENT

This cause having come on regularly on the 29th day of April, 1929, the issues in this action being brought to trial before Honorable Charles C. Cavanah, United States District Judge, at a term of this court held at Boise, Idaho, the plaintiff appearing by her attorneys, W. D. Gillis and John W. Graham, and the defendant by its attorneys, Messrs. Bothwell & Chapman, a jury being waived, and the court having heard the allegations and proofs of the parties, and the arguments of counsel for said parties, and having taken the decision in said cause under advisement, and after due deliberation having duly made its decision in writing in favor of the plaintiff and against the defendant, now on said decision and

on motion of W. D. Gillis, one of plaintiff's attorneys,

IT IS ORDERED, ADJUDGED AND DECREED, That plaintiff, Rosa M. Allen, recover of the defendant, General Insurance Company of America, a corporation of Seattle, Washington, the sum of $10,000, together with interest thereon from the 16th day of October, 1928, to this date at the rate of seven per cent (7%) per annum, or the sum of $495.80, less a credit in the sum of $302.36, being premium and interest on policy for two years to July 2nd, 1929, leaving a net balance due from the defendant to the plaintiff herein for principal and interest in the sum of $10,193.44, together with costs of this action taxed at $124.40, or a total judgment in the sum of $10,620.20, and have execution therefor.

Judgment signed and entered this 2nd day of July, 1929, at 4 P. M.

Filed July 2, 1929.
W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

ORDER CORRECTING JUDGMENT

A judgment was entered in the above entitled case on the 2nd day of July, 1929, in the sum of $10,-

000.00, together with interest thereon from the 16th day of October, 1928, to the 2nd day of July, 1929, at the rate of 7% per annum in the sum of $495.80, and it appearing to the court that the annual premium on the policy of insurance in question due September 20, 1926, and that the annual premium due September 20, 1927, in the sum of $130.40 for each year had not been paid by the mortgagee or the mortgagor herein and that the defendant is entitled to a credit on said judgment and interest for said two years' annual premium with interest from the date that said annual premium fell due to July 2nd, 1929, at 7% per annum in the sum of $302.46, principal and interest, and a mistake was made in not allowing said credit upon said amounts so found due the plaintiff and that the judgment so entered on the 2nd day of July, 1929, should have contained a provision for said credit in the sum of $302.36 and that said judgment should be corrected in that regard by this order as of the date of July 2nd, 1929:

It Is Therefore Ordered and Adjudged that the judgment entered in said above entitled cause on the 2nd day of July, 1929, be, and the same is hereby, amended by inserting after the words "on the sum of $495.80" on the second line of the second page of said judgment the following: "Less a credit in the sum of $302.36, being premium and interest on policy for two years to July 2nd, 1929, leaving a net balance due from the defendant to the plaintiff

herein for principal and interest in the sum of $10,193.44."

It Is Further Ordered and Adjudged that said amendment shall take effect as of July 2, 1929, the date of the entry of said judgment.

Dated in open Court this 31st day of July, 1929.

CHARLES C. CAVANAH
District Judge

Filed July 31, 1929.

(Title of Court and Cause)

BILL OF EXCEPTIONS

Be it remembered that the above-entitled cause came on for hearing before Honorable Charles C. Cavanah, Judge, a jury having been waived in writing, at Boise, Idaho, on Monday, the 29th day of April, 1929, John W. Graham, Esq., of Twin Falls, Idaho, and W. G. Gillis, Esq., of Boise, Idaho, appearing as attorneys for plaintiff, James R. Bothwell, Esq., of Bothwell & Chapman, of Twin Falls, Idaho, and Ralph Pierce, Esq., of Seattle, Washington, appeared as attorneys for defendant. After opening statements by counsel, the following proceedings were had:

Whereupon, R. A. Reynolds was called as a witness on behalf of the plaintiff and being duly sworn

testified upon direct and cross-examination as follows:

DIRECT EXAMINATION

My name is R. A. Reynolds. I live at Twin Falls, Idaho. My brother is C. L. Reynolds. I am interested with my brother in the ownership of this property covered by this insurance. The building was built upon Lots 28 and 29, Block 14, Filer. We were the owner of these lots in 1916 and are still the owner of the property. Exhibit No. 1 is a warranty deed issued by Henry Jones and Wilmoth Jones to Richard A. Reynolds and Charles L. Reynolds covering Lots 27, 28 and 29, in Block 14, in the Village of Filer. Exhibit "1" attached hereto is a part of this Bill of Exceptions and was admitted in evidence. We constructed a brick building on Lots 28 and 29, Block 14, Filer, in 1916. Exhibit "2" are the plans of the building. The building was 50 x 125 feet. At the time the building was built the ground floor was used for a garage. I made an oral application to the defendant company for insurance along in the year 1924. Arthur E. Anderson was the agent representing the company at that time. I think he left about a year after this policy was issued. F. C. Graves of Filer succeeded him as agent or representative of the company. The application for insurance was made on September 20, 1924. I kept records of insurance on the building. Those records were burned up. The construction cost of the

building was $35,000. The size of the policy that I applied for was $10,000. Whereupon, the following proceedings were had:

"MR. GRAHAM: Now I will ask that the defendant produce the original policy in accordance with the order made on the 22nd day of April.

MR. BOTHWELL: We now tender counsel as much of the original policy as we have. The other portion of it in the regular course of business—

MR. GRAHAM: We object to any explanation made at this time as to where the policy is. They were given the opportunity—

MR. BOTHWELL: I would like to complete my statement.

THE COURT: You may complete your statement and I will pass on it afterwards.

MR. BOTHWELL: We now tender to counsel in accordance with the order so much of the policy as we have and state that in the general course of business the other portion of the policy is destroyed. We only have this portion of the policy and will state that a copy of the policy which is attached to the complaint contains the other portion of the policy as it was written at the time, together with the original policy which we can now tender.

MR. GRAHAM: We still ask the enforcement of the order. We are entitled to the original policy.

THE COURT: He says it has been destroyed before this order was made.

MR. BOTHWELL: Yes, we have produced all we have of it.

MR. GRAHAM: It is too late to make an explanation of this kind. They were given an opportunity to show cause why it could not be produced. They put us to the expense of making the application for the order and we insist upon the production of the evidence.

MR. BOTHWELL: If the Court please, as I understand, we are only required to produce that which we have.

MR. GRAHAM: We ask that the penalty provided by Rule 96 of this court be applied and judgment by default be entered against the defendant.

MR. GRAHAM: After reading the rule. Under that rule plaintiff now moves for judgment by default against them for non-production of that evidence as required by the order of this court made and entered on the 22nd day of April, 1929, copy of which is now in the files of this court.

MR. BOTHWELL: As I understand the interpretation of the rule, if the court please, we are required to produce that which we have and the purpose of the rule is, that at the trial if they are unable to go ahead and make proof of the case, then they could simply move for default, but judgment by default must be based upon some reason, must be some reason for it and that is, that they could not prove their case, and that we had something that we were withholding from them.

THE COURT: There are always limits in invoking these rules. You are not injured and you are not required to prove that instrument by secondary evidence. The rule says the court may do so, it does not say must, if you are injured, taken by surprise or deprived of proving your case, then your position would be correct.

Further,

THT COURT: You understand my interpretation of this rule. You are entitled to judgment if you cannot prove your case.

MR. GRAHAM: Let me say what the admissions are. It may be stipulated and agreed between counsel for the respective parties that on the 20th day of September, 1924, the defendant company made, executed and delivered to R. A. Reynolds and C. L. Reynolds a policy of insurance for $10,000., upon a two story composition roof brick building situated on Lots 28 and 29, in Block 14, in the city of Filer, and that said policy had attached thereto the standard mortgage clause payable - - - mortgagee clause, payable to Rose M. Allen, together with building form rider.

MR. BOTHWELL: Let me suggest Mr. Graham, would not it be much more simple if I just admitted for the defendant that the copy of the policy attached to the complaint is a true copy of the original policy in question? I rather hesitate to stipulate about execution, delivery, etc.

THE COURT: That contains the mortgagee clause?

MR. BOTHWELL: Yes.

MR. GRAHAM: I want to show the policy was executed and delivered by the defendant company.

MR. BOTHWELL: Mr. Reynolds testified to that.

THE COURT: I understood him to say that he got this policy from the agent of the company. There is no issue in regard to that.

MR. BOTHWELL: There is no issue as to Mr. Anderson being agent of the company and Mr. Reynolds getting the policy.

THE COURT: I do not know as there is anything further to stipulate.

MR. GRAHAM: It handicaps us some in not having this exhibit here so that we can formally introduce it. It is hard to tell in a stipulation of this kind whether something is left out.

THE COURT: The form is attached to the complaint.

MR. GRAHAM: Have you any objection to stipulating that the policy was executed and delivered in the form of Exhibit "A"?

MR. BOTHWELL: We have no objection to admitting—we do not wish to be captious, that the copy of the policy attached to the complaint is a copy of the original policy and admitting Mr. Reynolds' testimony as it stands about the delivery, and

we raise no question as to Mr. Anderson being the agent of the company.

THE COURT: As I understand, the record shows that Exhibit "A" attached to the complaint is now admitted by counsel as a true and correct copy of the original policy here in dispute.

MR. BOTHWELL: That is correct, as I understand it.

THE COURT: And that the explanation—the admission counsel makes in open court, is that the original has been lost.

MR. BOTHWELL: Has been destroyed, yes.

THE COURT: It is admitted that Exhibit "A" is a true and correct copy of the original policy upon which this suit is brought?

MR. BOTHWELL: Yes.

THE COURT: And it contains the mortgagee clause attached to it?

MR. BOTHWELL: Yes."

Whereupon the witness R. A. Reynolds resumed.

"MR. GRAHAM:

Q. Was any policy delivered by the agent Mr. Anderson to you?

A. Yes. The policy was taken out in Mr. Anderson's office. I left it with Mr. Anderson with instructions to put it in the bank for Mrs. Allen to be placed in her safety deposit box. My instructions were that when the policy was issued it was to be put in the First National Bank of Filer as he had done with previous policies. I do not know

whether the policy was actually delivered by Mr. Anderson to the bank officials. I didn't see the policy after that at any time. The first year's premium was paid to Arthur Anderson. The premium for 1925, due September 20, 1925, was paid to F. C. Graves, on March 2, 1926, as shown by original and duplicate checks, Exhibits 4 and 5, admitted in evidence, copy of which exhibits are attached to this Bill of Exceptions and made a part hereof. The item of $130.40, which appears on plaintiff's exhibit 5, is the amount of the premium paid upon this policy. Attached to Exhibit 5 is a statement for insurance premiums rendered by F. C. Graves, and which is made a part of this Bill of Exceptions. On September 20, 1924, my brother, C. L. Reynolds, and I, were indebted to Rose M. Allen, plaintiff in this case. She held security on this property for this building for that indebtedness. Whereupon, the following questions were asked and answers given and objections made:

"MR. GRAHAM: Q. At the time of the execution of the note and mortgage was there any agreement between you and Mrs. Allen in regard to carrying insurance on the property?

A. Yes.

MR. BOTHWELL: I object to that. It is now shown that there was a mortgage, an instrument in writing, and that would be the best evidence.

THE COURT: The mortgage probably contained the condition to the insurance.

MR. GRAHAM: I do not think it contained the requirement as to the insurance, but at the time the note and mortgage were executed, and contemporaneous with it, he agreed to give additional security in the way of insurance.

THE COURT: He may answer.

A. I had an agreement with Mrs. Allen that I would carry $10,000. insurance at all times on the building, at least.

Q. This policy was taken out in accordance with that agreement?

A. With the mortgagee clause attached to it, yes."

The building was destroyed by fire on August 29th, 1928, at about 2 o'clock in the morning. I do not know the cause of the fire. The building was totally destroyed. There was no salvage. The reasonable rental value of the property was $2500., a year at the time it was destroyed. I was looking after this business at Filer myself. My brother C. L. Reynolds was not looking after any part or portion of the business. We were not in business at Filer at the time of the fire. We had our hardware store in this building some two years prior to the fire. The building was worth $24,000., or $25,000., at the time of the fire.

CROSS EXAMINATION

In 1917 we were in the hardware business; also the automobile business, I believe.

Whereupon request for a stipulation as to exceptions was made and allowed by the court as follows:

"MR. GRAHAM: May we have a stipulation that all adverse rulings of the court may be deemed excepted to?

THE COURT: The record may show that to all adverse rulings of the court each party may be deemed to have an exception."

This building was constructed in 1916, improved in 1917. The Filer Hardware Company afterwards was incorporated. I do not think we had another deed to this property prior to the deed of this deed, Exhibit 1. That property was not taken into the Filer Hardware Company. It was occupied by the Reynolds Motor Company. The lower floor was used as a garage. I had known Mr. Anderson since about 1915. I became indebted to Mrs. Allen about 1919. The original amount was approximately $13,000. The debt was for stock owned by her husband in the Filer Hardware Company which I purchased. Mrs. Allen's husband had 100 shares. I gave her notes and a mortgage on this building as security. I had most of the dealings with Mrs. Allen myself, with she and her attorney, Mr. Hazel of Twin Falls. The mortgage was given in Mr. Hazel's office at Twin

Falls. We were talking over the question of insurance at the time the original mortgage was given to Mrs. Allen. Mr. Hazel thought that there should be insurance kept on the building—additional security—and I agreed with him. In attempting to carry out our understanding we took out the policy immediately and had the clause attached to the policy in Mrs. Allen favor for $10,000.00. This was in 1919. I do not remember the company. Mr. Anderson was the agent. I think Anderson must have attended to that insurance personally. I do not know, that dates back considerably. I am sure that I took the first policy with Mr. Anderson. There was a policy taken, I am quite sure of that. The policy was put in Mrs. Allen's box at the First National bank. I presume that the policy was put in the bank box by the agent, whoever he was. Some years she did. I do not know who put the policy in the box in 1919. Mrs. Allen was living at Filer in 1919 at the time this policy was taken out. I believe she left Filer soon after that. That was just a one year policy, because this was the first five year policy I had ever taken out. The policies previous to the policy in question were all one year policies. Beginning with 1919, up until the time I took this one out, I took a policy each year for $10,000. I do not know the agency that I took out the original policies with, but Mr. Anderson had one or two of them, may be more. Prior to 1924 the policies were always put in Mrs. Allen's safety deposit box at the

bank, so far as I know. Those were the instructions I left with the agents at the time the policies were written. My instructions to Mr. Anderson in 1924 were to do with this policy as he had with the others to put it in Mrs. Allen's bank box. Whether or not he did that I do not know. I saw the policy that was written by Mr. Anderson in 1924 in his office. I recall the incident very clearly, because he had just taken over the agency and explained to me how much cheaper the premiums would be, because they sort of gave back refund on premiums each year. It was a mutual proposition. He showed me that it was a cheaper policy than the ones I had been carrying. It was also a five year policy and I would not need to be bothered with it. It was a much better policy and that is the reason I—I looked it over some and read it over some at the time; after he showed me the policy after it had been written and read over, I do not know what Anderson did with the policy, I never saw the policy after that time. The amount, $130.40, appearing on Exhibit 5, is the premium for the year 1925 on this particular policy. At the time this policy was taken out in 1924 we had our hardware and implement stock in the building. The hardware and implement stock remained there until about 1926. I think there has been a change in rates and a change of companies between 1919 and 1924 in the insurance of this building. I do not know the names of the companies. I never had access to Mrs. Allen's box in the First National

Bank and never had any dealings with her except in connection with borrowing this money and paying interest.

Whereupon, Raymond Graves was called as a witness on behalf of plaintiff, and being duly sworn testified upon direct examination as follows:

RAYMOND GRAVES—DIRECT EXAMINATION

My name is Raymond Graves. I am the son of F. C. Graves and am the agent of the defendant company at Filer, Idaho, now, and have been, since May 1924, I believe. We were not the agent at the time this policy was delivered, September 20th. Arthur E. Anderson was the former agent. He moved away and we purchased his business. The actual agent *after was* purchased his business at one time was Raymond Graves. Later, about November, a little over a year and a half ago, it was F. C. Graves and Son, up until that time, and until we took the business over, I was the agent; plaintiff's Exhibit 3, is the agent's copy of the policy issued by Arthur E. Anderson to C. L. and R. A. Reynolds, covering the property on Lots 28 and 29, Block 14, sheet No. 204. This is the agent's copy. Arthur E. Anderson's signature appears on this exhibit. We got this agent's record from Anderson in 1925. Whereupon Exhibit 3 was admitted in evidence. Copy of which

is attached hereto as Exhibit 3 and made a part of this Bill of Exceptions.

Whereupon Rose M. Allen was called as a witness on behalf of plaintiff and being duly sworn testified upon direct and cross-examination as follows:

ROSE M. ALLEN—DIRECT EXAMINATION

My name is Rose M. Allen. I live in San Diego, California, and have lived there five years first of June. I moved to Filer in 1906. Was there until 1920. R. A. Reynolds and C. L. Reynolds became indebted to me in 1919 for the purchase of stock in the Filer Hardware Company. They gave notes and a mortgage to secure this indebtedness, Exhibits 6, 7, 8 and 9 are notes given, Exhibit 10 is the mortgage. Whereupon, Exhibits 6, 7, 8, 9 and 10 were admitted in evidence, copies of which are annexed hereto and made a part of this Bill of Exceptions. The endorsements on the backs of the notes as to the payment of interest show the correct amounts of interest paid, together with the dates of payment. The total amount of principal and interest due and unpaid up to May 1st, 1929, is $10,675.82. At the time this mortgage was made and executed Mr. Reynolds was to carry insurance for my security; on September 20, 1924, I was residing at San Diego. I left Twin Falls in April, 1924. Whereupon, the following questions were asked and answers given:

"MR. GRAHAM:

Q. Now was there anything said by you or any instructions given to Mr. Reynolds in regard to the policy of insurance. What was done with it?

A. Yes.

Q. State what they were?

A. I instructed Mr. Reynolds that the policy should be taken to the First National Bank at Filer.

Q. What was to be done with it?

A. Placed in my bank box.

Q. You have a safety deposit box in which you kept papers in the First National Bank of Filer?

A. Yes.

Q. Do you know whether or not the policy was actually delivered to the bank and placed in this safety deposit box?

A. No.

Q. Did you ever see the policy personally?

A. No, sir."

I first learned that the building had been destroyed by fire about the 30th day of August, 1928. I learned this through a telegram from my brother in Twin Falls. I wired him that the policy was in the First National Bank in my box and received further word from him that they could not find the policy. I came to Filer three weeks later to look for the policy. I went to the bank but did not find it there with the papers in my safety deposit box. I then went to F. C. Graves' office and had a con-

versation with Raymond Graves, in which I said, "What about my insurance money?" He said, "that the policy had been canceled," and I said, "Who cancelled it," and he said, "Reynolds, and I said, "Why did you not notify me," and he said, "that the policy had been canceled at that time," and I went over to Mr. Gillis' office and employed him to represent me, in filing proof of loss. I stayed in Filer about a week. No part of the loss has been paid to me. No demand was ever made upon me for the payment of any premium on this policy, either by Mr. Graves and Son or the defendant company. I was never notified that the premiums had not been paid. I was ready and willing to pay the premiums if demand had been made upon me and I was in a financial position to pay the premiums if demand were made.

CROSS EXAMINATION

I went to California about April 1st, 1924. My husband's name was George F. Allen. He became interested in the Filer Hardware Company in 1917. He died November 26, 1918. He had stock in the Filer Hardware Company at the time of his death. I did not assist in his business affairs with the Filer Hardware Company. I knew Mr. R. A. Reynolds during the time my husband was a member of the Filer Hardware Company. I dealt with R. A. Reynolds in disposing of my husband's interest in the

Filer Hardware Company. Mr. Hazel, an attorney of Twin Falls, represented me. I recall the incident of the time the mortgage was signed in Mr. Hazel's office. Whereupon, the following questions were asked and answers given:

"MR. BOTHWELL:

Q. What was said, if anything, about insurance upon the building at that time?

A. At all times there was to be $10,000., insurance policy carried, with mortgagee clause attached, in my interest.

Q. That was the general conversation—what was said and —

A. Yes.

Q. An insurance policy of $10,000., was to be carried at all times?

A. Not less than $10.000."

I was living at Twin Falls at that time. Lived there until 1924. My attorney attended to filing the mortgage for record for me. I was present when Exhibits 6, 7 and 8 were signed and saw them signed. After these instruments were signed I put them in my bank box in the First National Bank at Filer, Idaho. I did that the very next day after they had been taken care of, as soon as the bank opened the next morning. If the date is June 20, 1919, then I put the notes in the bank the next day, on June 21. Other valuable papers were put in the

bank along with Exhibits 6, 7 and 8, at that time. There were two other notes of the same denomination as these three, making five original notes. They were all put in the bank by myself, in the bank box by me. Mr. Hazel filed the mortgage for record. I took the mortgage to my box with the rest of the things. I do not know when the mortgage was recorded. It was put in the bank box along with the other papers by me. I received plaintiff's Exhibit 9 on August 26, 1921, while I was living at Twin Falls. I received this note in Mr. Reynolds' office in the building that was burned. He gave me this note at that time after he made the payments which I have referred to. I put this note, Exhibit 9, in my bank box in the First National Bank of Filer. The first insurance policy was given to me at the same time when the notes were made out. I put that insurance policy in my box. It stayed there until canceled. I took it out of my box because it was canceled. The particular policy that I got from Mr. Hazel expired in September, 1924. No, the first policy that was taken out did not expire in September, 1924, it was just from year to year. He took only a year's each time. When the first insurance policy expired Mr. Reynolds applied for new insurance and gave the policy to me. I put the policies in my safety deposit box. I had four policies before September 20, 1924, as near as I can recall. The last one expired somewhere's around September 20, 1924. I moved to California in April 1924. I re-

turned to Idaho in June, 1927, and remained three weeks. I had no business dealings with Mr. Reynolds at any time in June, 1927, outside of paying my interest. I talked to him about paying the interest. He was not able to take care of it until October. In June, 1927, I talked to Reynolds about paying the interest which was then past due. I was here about three weeks. I had no other business dealings with Mr. Reynolds at that time in reference to these notes or this mortgage. I simply tried to collect the interest. I wanted the interest paid. I was finally paid in October of that year. Whereupon, the following questions were asked and answers given:

"MR. BOTHWELL:

Q. Now at the time you were here in June, 1927, were you in the First National Bank building at Filer?

A. Yes.

Q. And did you open your safety deposit box at that time?

A. Yes.

Q. Did you remove any papers from the box at that time?

A. No.

Q. You took nothing from the box?

A. No, sir.

Q. Did you inspect the papers that were in the box at that time?

A. No sir, I had no occasion to.

Q. Why did you open the box?

A. Merely to get out my notes to have any interest to apply—he had paid—on the back of them.

Q. He did not pay any interest until October, 1927.

A. I had other dealings. I was selling a home on the east side in Twin Falls at that time.

Q. Did you have any papers in the box with reference to your home at that time?

A. A deed.

Q. Do you remember removing the deed from the box at that time?

A. Yes.

Q. Did you complete the transaction at that time for the disposal of your home?

A. Yes.

Q. Do you remember removing anything from the box at that time excepting the deed?

A. No sir.

Q. Is your memory distinct upon that question?

A. Yes.

Q. After you went back home when next did you return to Idaho?

A. Not until September 20, 1928.

Q. Was that after the fire?

A. Yes."

I opened my box in the First National Bank at Filer at that time. I inspected the papers that were in the box, but removed none from the time I moved

down to San Diego in April, 1924, until June, 1927, when I returned to Idaho. I left my key to my safety box in the bank with Mr. Shearer, so that if I wanted at any time any papers taken from my box he could send them to me. I remember receiving notes from Mr. Shearer that I asked for during that time. They were notes pretaining to another transaction. After I went back in 1927 Mr. Shearer still had a key to my box. He had the key at all times that I resided in San Diego. He sent me no papers after June 1927. He sent me two notes during the time that I was at San Diego. When I went down to San Diego in 1924 the insurance policy on this property was in my safety deposit box. When I inspected the papers in the box in September 1928 there were other insurance policies that I had in the box. I do not remember how many policies were there. There were other insurance policies covering Lots 28 and 29, Block 14, in Filer, and there were other canceled policies. There were some old policies in there. There were some old policies in there covering this same building, canceled policies. I destroyed them, when I came back in September 1928. No one was present when I destroyed them. I put the first policy in the box myself. The policies that I found in the box when I came back in September 1927 were put there by myself and there were four as near as I can recall. In April 1924, guess four policies were in the box. I got these policies from Mr. Reynolds. I put them

in the box myself. Reynolds sometimes handed me the policies, if it was convenient, other times he would take them to the bank, or, perhaps, the agent would taken them over for me. By the agent I mean Arthur Anderson. I cannot recall the number of times that Anderson took the policies to the bank. I think I took the policies there two or three times. Mr. Reynolds took a policy to the bank. I do not know how many times. Reynolds ordered the policies occasionally. I did ask Mr. Anderson to see that it was taken care of. When I went away in April 1924, Reynolds said to me that he was taking out a new policy, a five year policy, for $10,000., with the mortgagee clause payable to me. I told him to take it to the First National Bank of Filer to give it to Shearer to put in my box. That was the first part of April 1924. This conversation took place between me and Reynolds at his place of business in Filer. No one was present except Mr. Reynolds and myself. That is Mr. R. A. Reynolds who testified here. He said he was going to take the new policy out with the General Insurance Company of America. He did not tell me what the rate would be or what it would cost him. He told me the policy would be for $10,000. I had no correspondence with Reynolds after April, 1924, prior to the fire in 1928. I had no correspondence with Mr. Shearer about insurance during that time. The question of insurance did not come up after April 1924 until after the fire, and then I heard of it first by wire from

my brother. He wired that the Roof Garden had been destroyed and where was the policies. I wired that the insurance policy was in my bank box in the First National Bank. He replied that him and Shearer had gone through the box and that the policy was not to be found. Then I came up in September, 1928, and went to Mr. Graves' office, talked with Raymond Graves, asked him about my insurance money. He said the policy was cancelled. I said, "who cancelled it," and he said, "Reynolds," and I said, "Why didn't you notify me," and he said, "he left that for Reynolds to take care of." I said, "you will have to admit that it was poor business on your part that you didn't notify me." After that I went to see Mr. Gillis.

RE-DIRECT EXAMINATION

When I spoke of these old policies being canceled I meant expired. No old policies were canceled on account of violations that I know of. These policies that were taken out first were for one year at a time. And when they expired new policies were issued. Whereupon, the following questions were asked and answers given and objections interposed:

"Q. Did Mr. Reynolds at any time have any authority from you to go to the bank and get any papers out of your safety deposit box?

A. No, sir.

Mr. BOTHWELL: That would be a conclusion of the witness.

THE COURT: Did you give him permission at any time?

A. No, sir.

MR. GRAHAM:

Q. The only party authorized to go into your box was—

A. Mr. Shearer."

Whereupon, Guy H. Shearer was called as a witness on behalf of plaintiff and being duly sworn testified upon direct and cross examination as follows:

GUY H. SHEARER—DIRECT EXAMINATION

My name is Guy H. Shearer. I live at Filer. I am and have been engaged in the banking business at Filer, Idaho, since 1911. I am President of the First National Bank of Filer. I was first Cashier. Mrs. Allen, the plaintiff in this case, had a safety deposit box rented in the First National Bank of Filer. It was like any other safety deposit box, except until Mrs. Allen removed to California she left her key with me in order to have access to her box without making the trip. She would write up if she wanted any particular article and I would register it back to her. She had a safety deposit box in the bank ever since her husband died. They

had the same box joint at the time of his death. I have no recollection of Mr. Anderson, agent of the defendant, bringing a $10,000 insurance policy on the building in question over to the bank on or about September 20, 1924, or at any time thereafter and leaving it with me. I don't remember it. If he had of left it it would have been turned over to Mrs. Allen or put in the box. Prior to the time she left we put it in safe keeping and then when she would return she would put it in the box. I do not recall any policy being left there after she left for California in 1924. If a policy had been left there it would have been put in her box. My instructions were that if any papers were left for me to put them in her box. I never saw that $10,000 policy. After the fire her brother came to the bank and inquired in regard to the policy. He and I opened the safety deposit box to see whether or not any policy was in the bank at that time. The $10,000 policy was not in the box at that time, nor was any other live policy. Sometime along after that, about September 20, Mrs. Allen came to Filer. I was present when she made a search of the box, but I did not go through the papers during the time that I have been in business in Filer. I have become familiar with the value of business property. I was familiar with the reasonable market value of the property in question on August 29, 1928. I think, basing it upon the income of the building, it should be worth from $20,000 to $22,000. The building was a total loss.

CROSS-EXAMINATION

While Mrs. Allen was living around Twin Falls and Filer the papers that were brought to the bank were left there and held by the officers of the bank and turned over to her and she would put them in the safety deposit box. I think Mr. Anderson brought several insurance policies to the bank during that time. I could not say definitely, at least two. I believe there may have been several that he left for her. I cannot remember. It may have been Reynolds instead of Anderson. At least to my best recollection there was at least one policy left there that I know of. No policy was left there after she moved to California. My estimate of what the property was worth included the lots, as well as building, that is, the fair value.

RE-DIRECT EXAMINATION

The lots should be worth $1500.00. I took into consideration the location of the building in the town, the kind of a building it was, and the income, in fixing the value. At the time the plaintiff's brother and myself examined the papers in the safety deposit box we found several expired policies, at least two, on this building. All were expired.

RE-CROSS EXAMINATION

I do not recall the companies in which the different policies were written. I think one was the

Aetna. I do not remember the name of the agent that appeared on any of them. There were at least two policies. There must have been two.

Earl Felt was called as a witness on behalf of plaintiff and being duly sworn testified on direct examination as follows:

EARL FELT—DIRECT EXAMINATION

My name is Earl Felt. I live at Twin Falls, Idaho. I am in the building and contracting business. I have made an estimate of the cost of reconstructing the building in question that was destroyed by fire. My estimate is contained in Exhibit 11. Whereupon Exhibit 11 was admitted in evidence. The total cost, according to the recapitulated figures in my estimate is $34,608. Whereupon Exhibit 12 being notice to produce original letters and proofs of loss, containing a receipt of service by Bothwell and Chapman, attorneys for the defendant, was admitted in evidence, copy of which is annexed hereto and made a part of this Bill of Exceptions as Exhibit 12.

Whereupon, W. D. Gillis was called as a witness on behalf of the plaintiff and being duly sworn testified on direct and cross-examination as follows:

W. D. GILLIS—DIRECT EXAMINATION

My name is W. D. Gillis. I am a lawyer and attorney general of the state of Idaho. Prior to January 7, 1929, I was practicing law in Filer, Idaho. I made proofs of loss on behalf of plaintiff in this case. I called on F. C. Graves and Son on September 20, 1928. Reynolds told me that the policy had been canceled. I asked him if he had a record of it and as I recall it at that time he gave me the agent's record. He loaned me the record introduced in evidence here. I told him I was expecting to make proof of loss. I wrote, as I recall, three letters to the General Insurance Company at Seattle. I wrote the letter which is marked Exhibit 13, received the letter marked Exhibit 14, and wrote the letter marked Exhibit 15, and received the letter marked Exhibit 16. I wrote letter marked Exhibit 17, and received letter marked Exhibit 18. These letters passed back and forth between me and the General Insurance Company of America by regular correspondent of mail. Exhibit 19 is original proofs of loss made by me. Whereupon, Mr. Gillis was withdrawn as a witness from the stand and L. F. Becker was called as a witness on behalf of the plaintiff and being duly sworn testified as follows:

L. F. BECKER—DIRECT EXAMINATION

My name is L. F. Becker. I reside at Seattle. I am Assistant Secretary of the defendant company.

Exhibit 13 is a letter received from Mr. Gillis by the company. Exhibit 14 is a letter written by the company to Mr. Gillis. Exhibit 15 is a letter written by Mr. Gillis to the company. Whereupon, Exhibits 13, 14, 15, 16, 17, 18 and 19 were admitted in evidence and are annexed to this Bill of Exceptions as Exhibits 13, 14, 15, 16, 17, 18 and 19, and made a part hereof.

Whereupon, Mr. Gillis resumed the witness stand and testified upon cross-examination as follows:

CROSS-EXAMINATION—W. D. GILLIS

Mrs. Allen first came to see me on September 20, 1928, in reference to this matter. At that time I went over to see Mr. Graves and he loaned me the record that has been introduced in evidence here. Mr. Graves told me the circumstances under which the policy had been canceled. He went into some little detail, that I don't recall, except the main thing that it had been canceled. Mrs. Allen employed me to make proof of loss and to collect for her under the policy. Whereupon, the following questions were asked and answers given.

"MR. BOTHWELL:

Q. What business was carried on in this building at the time it was destroyed by fire?

MR. GRAHAM: I object to that as not proper cross-examination.

MR. BOTHWELL: He made proof of loss here.

THE COURT: Overruled.

A. My recollection is, that there was some hardware stock. I would not be sure about this hardware stock, in the basement and a sort of a garage in there, that is service repair for automobiles and a number of automobiles.

Q. There were a number of automobiles burned up in this fire?

A. Yes, sir.

Q. How many?

A. I could not tell, Judge, I was not there at the time of the fire. I had no occasion to know.

Q. You say your recollection is there were some implements stored in the basement?

A. That is my recollection. I wouldn't be sure about that. I said hardware stock, not implements, I wouldn't be sure.

Q. Consisting of what?

A. Wouldn't be sure.

Q. You would not be sure, as a matter of fact, whether there was any hardware stock in the basement?

A. No, I am not sure of that. It is my belief that there was.

Q. What was the first floor used for at that time?

A. The first floor was used, as I have said, for this repair shop and auto storage and servicing of cars.

Q. What was the upper floor used for?

A. Are you speaking of the portion that was used as a dance hall?

Q. Yes.

A. That was used for the holding of dances.

Q. How much basement was there under the first floor?

A. I could not be sure. I could not recall with any accuracy. I have not been in it.

Q. Calling your attention to the proof of loss, plaintiff's exhibit 19, subdivision "h", which reads as follows: 'By whom and for what purpose any building herein described and the several parts thereof occupied at the time of fire. First floor - - - implement stored by Filer Hardware Company." Why did you make that statement and sign it as agent for the mortgagee if, as a matter of fact the first floor was used for a garage and repairs and for these automobiles?

A. For many years it had been used as an implement store, but it was still used as an implement store and some implements were there—some implements were around there and some hardware stock.

Q. By whom was this considered as an implement store. This first floor?

A. By everybody in town.

Q. By everybody in town?

A. Yes.

Q. Well, is that the only explanation that you

can make now as to the reason why you inserted that statement in this proof and swore to it?

A. The only thing that occurs to me that I thought at all necessary.

Q. Whether necessary or unnecessary, is that the only reason?

A. That is the reason."

Whereupon, the plaintiff, Rose M. Allen, was recalled for further cross-examination and testified as follows:

ROSE M. ALLEN—CROSS-EXAMINATION

When I returned in June, 1927, I was not in the building on which I had the mortgage; that building about a block from the First National Bank building of Filer. I was in the First National Bank building of Filer in June, 1927, when I returned and opened my deposit box at that time and withdrew some papers from it at that time.

Whereupon, the following questions were asked, answers given and objections interposed and rulings made thereon:

"MR. BOTHWELL:

Q. Was this policy upon which this suit was brought in the box at that time?

A. I do not know.

Q. Did you see any policies in the box at that time—insurance policies?

A. Policies upon other insurance? Yes.

Q. As to this particular property did you say there were any policies there at that time.

A. I had no occasion to look.

Q. Would you say then whether you had occasion to look or not?

A. There was a bunch of them together.

Q. A bunch of policies together?

A. Yes.

Q. You say you do not know whether this policy was in the box at that time or not?

A. No, sir.

Q. Did you examine any policies in the bank at that time?

A. No, sir.

Q. Did you inquire from Mr. Shearer as to whether or not Mr. Reynolds had brought the policy there in 1924 and put it in that box?

A. No, sir.

Q. Did you ask Mr. Reynolds about that at that time?

A. No, sir.

Q. Did you talk with Mr. Reynolds in June, 1927, about this policy?

A. No, sir.

Q. Or about any insurance upon their property?

A. I do not recall that I did.

Q. You were talking with Mr. Reynolds about collecting interest on the notes?

A. Yes.

Q. Did you say anything to him about insurance at that time?

MR. GRAHAM: She has already answered that.

THE COURT: She said she did not recall. Sustained.

Q. Well, do I understand by that that you may have talked to him about it at that time?

A. No, sir, I did not.

Q. You looked in your box in 1927 to see whether this policy was there?

MR. GRAHAM: I object to that as immaterial, not proper cross-examination.

THE COURT: Sustained.

Q. Why did you not inquire from Mr. Reynolds about the policy at that time?

MR. GRAHAM: I object to that as immaterial and not proper cross-examination.

THE COURT: What is the purpose why she did not do this. I can't get the idea unless it is going to lead up to something else. I cannot see where it is competent now as to why she did not do this or do that. She has testified as to what she actually did. I can see how it might be competent. I do not know what you may be leading up to. It might be material under certain circumstances to ask that question. I think I will let her answer the question.

THE COURT: He is asking why you did not inquire from Mr. Reynolds about this policy in

1927. Any reason why you did not do it, if you had any?

A. I never thought of asking him.

THE COURT: That other question I think I will allow you to answer that.

MR. BOTHWELL: Will you read the question, Mr. Reporter?

Question read by reporter: Q. Why didn't you look in your box in 1927 to see whether this policy was there?

A. I just never thought of looking, that was all.

Q. You were leaving that matter, the question of insurance, to Mr. Reynolds, as I understand it?

A. Yes."

RE-DIRECT EXAMINATION BY MR. GRAHAM

"Q. The last question asked you was, that you left the matter of insurance up to Mr. Reynolds—what did you mean by that—simply the matter of procuring insurance?

MR. BOTHWELL: I object to that as leading.

THE COURT: Sustained on the grounds that it is leading.

Q. What did you mean by leaving the matter of insurance to Mr. Reynolds?

A. As I had done in previous years?

Q. Yes, as to getting the insurance.

A. Surely.

Q. Did you ever authorize Mr. Reynolds or anybody else to cancel any policy for you?

A. No, sir.

Q. Explain to the court what you mean by leaving the matter of insurance to Mr. Reynolds.

A. Do you mean the time I resided in San Diego?

Q. Leaving the question of securing this policy to Mr. Reynolds—what did you mean by leaving it to him—what was the arrangement between you and Mr. Reynolds in regard to that?

A. Mr. Reynolds said that he was taking out this five-year policy, with the mortgagee clause attached, payable to me, and would take it to the bank at that time.

Q. When you answered that you had left the matter of insurance to Mr. Reynolds you had reference to securing of the insurance?

A. Yes.

Q. Was that all?

A. Yes."

RE-CROSS EXAMINATION

"MR. BOTHWELL:

Q. I understood you to say that you meant the same as it had been in other previous years. In the previous years you had taken the policy yourself and placed it in the box yourself, had you not?

A. Yes, but I said at times he would take it to

the First National Bank and I placed it in the box.

Q. That is the way you said you had done on previous years?

A. Yes.

Q. Then why in previous years, if you had placed these in the box, why didn't you look in the bank box to see in June whether or not the policy was in the box.

MR. GRAHAM: That has already been answered.

THE COURT: Yes."

Witness excused.

MR. GRAHAM: That is all on behalf of the plaintiff.

Plaintiff rests.

Whereupon, Raymond F. Graves was called as a witness on behalf of defendant and being duly sworn testified upon direct and cross-examination as follows:

My name is Raymond F. Graves. I reside at Filer, Idaho. I am in the fire insurance business. I am 28 years old. My father is F. C. Graves. I have lived in Filer since 1908. I took over the agency for the General Insurance Company of Seattle at Filer, from Arthur E. Anderson, in May, 1925. My father and I operate the business together. The license in this particular case was issued to me and later it was changed to F. C. Graves and Son. Our place of business was on Main

Street at that time, where it is now in Filer. My father was in the office with me at the time I received from Anderson at that time his expiration list, index we call it, office copies of his daily reports as to policies issued, some unused policies and some other miscellaneous supplies, such as letter heads, etc. The supplies were placed in filing cabinets in our office, those that have not been used or destroyed are still there. We received the record which has been introduced in evidence here from Mr. Anderson, along with other similar copies of daily reports, the yearly payment to secure a renewal of the policy became due September 20, 1925, and was paid to me. Defendant's Exhibit 20 is the face of the policy that was issued by Anderson to Reynolds Brothers, the face of the policy in question here. The two leaves attached to Exhibit 20 are renewal certificates that are sent to the agent by the company and delivered to the insured upon the payment of the premium at the end of the policy year. The writing in lead pencil on the face of Exhibit 20 is in my own hand writing. I had the face of the policy Exhibit 20 in my possession at one time. At that time the policy was intact, all together. I got the policy from Mr. R. A. Reynolds. On October 4th, 1926, I had talked with Mr. Reynolds prior to October 4, 1926, in Twin Falls, a few days before the policy expired, prior to September 20, 1926. The conversation occurred in Twin Falls on Shoshone Street at the Reo Sales Agency. The

girl who was working with Mr. Reynolds was present, besides Mr. Reynolds and myself. I do not recall her name. I asked Mr. Reynolds about the payment of the renewal premium on the policy. He told me at that time that because he could replace the business in the Hardware Dealer's Mutual and thereby save himself a little premium he was not going to pay the renewal premium on the policy and was going to put it in the Hardware Dealer's Mutual. I told him at that time I would leave my policy there until such time as he could get the insurance placed with the Hardware Dealer's Mutual, so that in the meantime, if the building would burn, he would not be out a policy. I did that merely as a courtesy. I secured the policy from Mr. Reynolds in his office in Twin Falls. Two weeks after our previous conversation I went back and requested him to give me the policy that he had with him and my recollection now is, that the girl working for him in the office went to the safe, opened the policy files in the steel cabinet safe and took the policy out and it was given to me there in his office in Twin Falls. I brought the policy back to Filer and wrote across the face of it what had happened to it, put it in an envelope and mailed it to the insurance company. I wrote across the face of the policy the language which appears in lead pencil and mailed it to the company. I had no further conversation with Mr. Reynolds concerning this insurance after the policy had been sent to the

company by me that I recall. The original policy which I received from Mr. Reynolds was not among the papers, records and files which were turned over to me by Mr. Anderson. I collected the premium that was due September 20, 1925, from them after it was due, I do not recall that we had any conversation at that time relative to this particular policy. I had a conversation with Mr. Reynolds the morning following the fire in the Reo Sales Agency on Shoshone Street, Twin Falls, Idaho. The reason for my being there was that the Postoffice building which adjoins the building covered by the policy in question was damaged at the same time this building was destroyed. While in Mr. Reynolds' place of business that morning I asked him if he had located the balance of his insurance on this building. I asked him if he recalled that he had told me that he was going to place it with the Hardware Dealer's Mutual. I suggested then that he look for correspondent with Mr. McKinsey, who was the San Francisco agent. I distinctly recall his stenographer looking through their correspondence in an effort to find correspondence with Mr. McKinsey relative to the insurance on this building with the Hardware Mutual. I also recall Mr. Reynolds looking through his checks in an effort to find where he had paid the premium to the Hardware Mutual on this particular building. Whereupon, defendant's Exhibit 20 was admitted in evidence over the following objection of counsel for plaintiff.

"MR. GRAHAM: I object to this for the reason that there is no sufficient foundation laid. It is only part of an instrument and for the further reason that the endorsement on the face of this exhibit is self-serving and is a self-serving declaration by the defendant."

I had a conversation with Mrs. Allen following the fire in our office at Filer. She came in the office and inquired about this insurance, criticizing me quite severely because I had not notified her that the policy had been surrendered to me by Reynolds and that I did not consider that we had had any particular reason why we should notify her under the circumstances. That it was given to us, that he said he was going to place it in the Hardware Dealer's Mutual and I had no reason to doubt that he was going to do that.

CROSS-EXAMINATION

I kept still when she said I was a poor business man. I do not know what you mean by the question, what authority you have got to cancel policies. It was given to me to send to the company. I merely made the notation as to why it was received. It didn't mean anything except to convey to them the idea that the policy was no longer in force. I had authority from Reynolds to cancel the policy. We have the authority from the company to cancel a policy at any time. I have the usual authority of

any insurance agent, that is, to issue policies, make inspections. I do not have authority to pay lawsuits. I have authority to go ahead and make temporary repairs after a fire to prevent further loss. I have exercised that authority. I didn't write a letter to the company at the time. We have thirty days within which to remit premium. I am not required to report on these premiums until thirty days after the due date. If the policy was taken out on September 20th and the premium was due September 20th, I would report the first of November. I exercise that right to hold the policy in force in case the premium is not paid. That is not a matter of authority, it is a matter of whether I want to take the chance of losing the premium as an agent. The policy lapsed in this case when it was surrendered to me. Whereupon the following questions were asked and answers given and objections interposed and rulings by the court upon the objections were made:

CROSS-EXAMINATION

"MR. GRAHAM:

Q. The policy was actually canceled on September 20th.

A. It was not actually canceled on September 20th.

Q. When was the policy canceled?

A. Either—

MR. BOTHWELL: That calls for a conclusion of law. The facts, I think, are all before the court of what occurred.

THE COURT: It is a question under the circumstances when a policy is to be canceled. I think it is competent.

Q. The premium due September 20, 1926, was it paid by Reynolds?

A. No, sir.

Q. But you carried it on until October 4, 1926?

A. Yes.

Q. Is any authority given you by the company to carry policies along for that length of time?

A. Not any.

Q. How did you come to mark the policy canceled on October 4th?

A. That is the day that I sent it to the company.

Q. When was it canceled?

A. It was canceled the day Mr. Reynolds gave the policy to me."

Reynolds could pay the premium within thirty days after September 20th, or up to and including October 20, 1926. I never at any time notified plaintiff of the cancellation of this policy or the non-payment of the premium. Their girl went to the safe and got the policy and handed it to him and he in turn handed it to me. At the time Mr. Anderson went out of business he turned over in-

surance supplies and a few abstracts, things that had accumulated around the office. He handed over the agent's record of all policies. There were something near 500 records. There were a few policies turned over to me by Anderson that had been left in his care for safe keeping. I would say about ten or fifteen. I do not recall the names of any of them. I do not think we have any record of these policies. It is absolutely impossible that this policy was one of the policies turned over to me. And if I already had the policy, how could I have gotten it from Reynolds? I was not guilty of negligence or carelessness in this matter. The premium which was due September 20, 1925, was collected 3 or 4 months after it was due. The policy was in effect during that interim. It was an act of generosity upon our part to carry it along from September 20, 1925, to March 2, 1926, without the payment of premium. Reynolds was a little short of funds at that time. We do not finance all policy holders that don't have the money. It is problematical as to how long we could carry a policy holder if he did not have the premium. I do not have any authority from the company to carry customers that way. If we want to take a chance it is up to us. We may either remit to the company ourselves or cancel the policy for non-payment. We have thirty days within which to collect and remit. If we went thirty days and the premium was not paid there would be no loss. I presume it amounts to thirty

days of grace. When a policy falls due on September 20, 1926, the policy holder has thirty days after that within which to pay the premium and the policy is still in force. I met Mr. Reynolds about September 20, 1926, in his office on Shoshone Street. He told me that he had decided to carry the policy in the Hardware Mutual. I never received any communication from the company when I sent this policy in. It is customary to send communications of that kind without a letter. I would not say that I went to Reynolds' office on September 20th, but it was close to September 20th, a few days before September 20th, either on the 20th or a couple of days before, on Shoshone Street, and on October 4th, I went back to their office on Shoshone Street and at that time had a conversation with R. A. Reynolds himself. The policy was delivered up by him to me. I do not recall that anybody was there other than the girl.

RE-DIRECT EXAMINATION

I talked with Reynolds in September and October, 1926, on Shoshone Street South, where they had the Reo Sales Agency. They were in that building, at least I do not know the name of the building, it is next to the harness shop on Shoshone Street South in the same block as the White Undertaking Parlors.

L. E. BECKER was called as a witness on behalf of defendant and being duly sworn testified on direct and cross-examination as follows:

DIRECT EXAMINATION

I have previously testified in this case. I am assistant secretary of the defendant company and have control of the records of fire insurance policies canceled and returned to our office. It is the customary practice for the agents to return only the face of the policy. It cuts down the price of postage and the face is all that is necessary and that is the custom of insurance companies throughout the United States. Exhibit 20 is the original record in my office. Exhibit 21 is the office record card of the policy that was issued. It contains an office record we have and shows every transaction on that policy. That is an original record of our office. The meaning of No. 13 on the card is that we lost the business by the business being placed in another company. Exhibit 21 was offered in evidence and received by the court over objection of plaintiff's counsel on the ground that there had been no sufficient foundation laid and that it was not binding upon the plaintiff in this action and does not tend to prove any issue in the action. Said Exhibit 21 is attached to this Bill of Exceptions and by reference made a part thereof as Exhibit 21. The two leaves attached to Exhibit 20 are renewal

certificates. Those two sheets which are attached to the face of the policy are office records. They are first sent to the Idaho Rating Bureau, who approve them and attach to the policy.

CROSS-EXAMINATION

When the policy in question was returned to us by our agent at Filer it was attached to our records and all records were canceled in the office, taking the policy off our books, both as to reservations, liabilities and every phase of it. It was ended. We handle a thousand policies a year and 100,000 policies are on our books. The man who receives the policy gets the record card and makes an office record. Every policy goes through the same routine. The man who gets the face of the policy marks this card as cancelled. This policy is sent in and turned over to the cancellation clerk to make this record and then goes through the finance record of the insurance department. No formal action is taken by the board of directors in cancelling the policy. An agent has authority to cancel it. All soliciting agents have that power. He has power to cancel the policy for any reason he may see fit. There was no letter written with this. If we want to know any detail we ask the agent; the collection of the premium and all that is up to the agents to make. No agent is allowed to make adjustment of loss unless he refers it to us for specific instruc-

tions. He has no authority to waive any conditions of the policy. He has authority to cancel the policy. If a premium is not paid it is up to him. Our collection rule is thirty days and we give a lee-way of fifteen days. We allow him thirty days flat cancellation and then a lee-way of fifteen days sometimes. Forty-five days is the maximum. It is the duty of the agent in case he has notice of any breach of the policy by the policy holder to cancel the policy without taking it up with us. It is up to the agent to look after the company's business and that is what he is here for. The renewal certificates are made out each year after the policy premium is paid and renewed. This renewal certificate dated September 20, 1927, was attached to the policy in the office; as each of the policy premiums come due this was sent to the rating bureau for approval for each year and sent back to the Seattle office and attached to the policy. The renewal certificate which renewed for one year to 1927 is a part of our office record of the policy in the policy itself. The payment of the premium renews the policy. This is a part of our office records. At the time the policy was sent to us we made no demand on the plaintiff in this action for the payment of premium, because he had canceled the policy. No, we made no demand on the plaintiff for the payment of the premium. No demand or notice was given her of the cancellation of the policy and no notice given to any person on her behalf. Our com-

pany never made any demand upon her for the payment of the premium. The agent gives notice of that kind, but we see that the agent fulfills his duty and all parties are notified unless the policy is surrendered, which in itself is evidence. We gave no instructions to our agent at Filer to make a demand for this payment. There was no request from us. When the agent surrenders the policy we go by what he tells us that it has been cancelled. It is up to him to get his commission. We take information furnished by the agents absolutely.

RAYMOND GRAVES re-called as a witness on behalf of defendant testified as follows:

DIRECT EXAMINATION

I never gave notice of any kind or made demand upon the plaintiff for the payment of the premiums which were due September 20, 1926, or 1927. I gave no notice to her on behalf of the company of the cancellation of the policy. I do not know the girl's name that was in the office at the time I got the policy. She lives in Twin Falls. I do not know whether it is the same girl that is working there now or not. I don't know J. E. White's daughter by name. I didn't ask Reynolds for the premium on October 4th. It had been previously undestood that he was going to surrender the policy to me. I went over for the policy.

RE-CROSS EXAMINATION

I am sure the policy was on the building and not on the hardware stock. We carried a policy on the hardware stock but it was not cancelled at that time. Anderson lives somewhere in California.

Whereupon, RONALD L. GRAVES was called as a witness on behalf of defendant, and being duly sworn testified upon direct and cross-examination as follows:

DIRECT EXAMINATION

My name is Ronald L. Graves. I live at Filer, Idaho. I am in the garage business. Have lived at Filer twenty years. I am a brother of Raymond Graves, who is in the insurance business. I lived directly across the street and a little north of the building at the time of the fire on August 29, 1928. I came to Twin Falls the morning after the fire with my brother, Raymond Graves. I saw R. A. Reynolds at his office in the Reo Sales Company on Shoshone Street. Mr. Reynolds and his stenographer and Mr. Taber of Twin Falls, were present. I didn't have any conversation with Mr. Reynolds. I heard a conversation between Reynolds and my brother. Before I went there Mr. Reynolds and the bookkeeper were hunting for something, looking through check stubs and correspondence, trying to find something which had been written to Mr.

McKinsey, the agent of the Hardware Mutual, and Mr. Reynolds asked the girl to find a letter, if she could, a letter to Mr. McKinsey or check stubs, and we went into the place and something was said about furnishing Filer with good entertainment and Reynolds said, "I cannot find the insurance on the building." I remained there fifteen or twenty minutes. My brother went down there to find out about getting temporary repairs on the Postoffice building adjacent to the Roof Garden. Reynolds owned the Postoffice building. My brother had insurance on that building.

CROSS-EXAMINATION

I didn't go down to Twin Falls for this express purpose. I did not go along as a witness. My brother wanted me to ride with him and I had nothing else to do, that is all of the conversation I heard that morning. I heard something else in regard to insurance, but not on that day and it was not in Mr. Reynolds' place of business. I never went to Mr. Reynolds' place of business with my brother or father in regard to insurance at any other time. I paid particular attention to the conversation. I was not particularly interested in the conversation. On the way down my brother said he was going down to see Reynolds about making temporary repairs on the Postoffice building. The question at that time was the policy on the Post-

office building. The policy in question in this action was not discussed on the road down to Twin Falls. I didn't make a memorandum of the conversation. Taber, Reynolds, the bookkeeper, my brother and myself were present. Mr. Reynolds was looking for stub checks to Mr. McKinsey and the Hardware Mutual. Mr. McKinsey was the agent for the Hardware Mutual. I am not acquainted with all these insurance agencies. I heard that he was agent for the Hardware Mutual. I know the agents of several insurance companies. I do not know the agent for the New Zealand. My brother is agent for the General Insurance Company. I do not know the the general agent of any other company. Something was said about a policy on the stock in the Hardware Mutual. That was not the one that he was interested in trying to find. He knew that that one was—I didn't see him bring that one out. He said he knew he had a policy on the stock in the Hardware Mutual. I don't know whether one or a dozen. I don't remember exactly what he said. I believe he said he had a policy on the stock. He was not interested in the policy on the stock. I just happened to overhear this conversation. I didn't spend any particular time to charge my memory with the facts. I heard the conversation and remember what I heard. That is all that occurred to make me charge my memory with these facts. There was no criticism of my father or brother in regard to the manner or method in which

the insurance had been handled. There was no criticism that might involve them or make them liable in some way. I never heard any criticism; that is all the conversation I remember. The question arose in that conversation in regard to insurance in the Hardware Mutual. Both names were mentioned, the Hardware Mutual and Mr. McKinsey. Reynolds instructed the bookkeeper to see if she could find any correspondence or any check stubs concerning checks which might have a bearing upon where he had paid the premium to the Hardware Mutual or McKensey on an insurance policy on this building. He referred to this building, the building that was burned. He said he had a policy in the Hardware Mutual on that building. He had had one on the building that was burned and was trying to find out where he had paid the premium on that policy. I know it was on the building. He didn't say as to the amount of the insurance. He didn't say when it was taken out, if he did I don't remember. I don't think I could be mistaken about the policy in the Hardware Mutual being on the building and not on the stock. Whereupon the following question was asked and answer given:

"Q. If he didn't have one with the Hardware Mutual on the building, then you must have been mistaken.

A. I must have. He had one with the Hardware Mutual and was looking for the place where he had paid the premium on the building. He must

if he didn't lose any hardware stock in that fire."

In response to a question by the court, the witness testified:

"I do not write insurance." And continued further, "I have never been an agent for the General Insurance Company of America."

Whereupon, F. C. GRAVES was called as a witness on behalf of the defendant and being sworn testified upon direct and cross-examination as follows:

DIRECT EXAMINATION

My name is F. C. Graves. I live at Filer, Idaho. Have lived there for twenty years. Have been engaged in the real estate and insurance business at that point for nineteen years. At present I am State Senator from Twin Falls County. I have been a member of the Public Utilities Commission of this state. I am acquainted with Arthur Anderson, who formerly lived at Filer. My son Raymond, who was associated with me and myself took over the business of Mr. Anderson in May, 1925. Our place of business is located about the center of the block on Main street, four or five doors west of the First National Bank of Filer. We have a steel safe or filing cabinet in our office for the office files and records and papers. We took over the insurance business from Mr. Anderson. We took over his

daily reports, copies. We may have taken over three or four policies. I do not now recall. I didn't see the policy in question in this action. The one that was written by Mr. Anderson for Mr. Reynolds in which Mrs. Allen is named as mortgagee, until Raymond went to Twin Falls and brought it up to return to the company. That was the first time that I saw the policy. I have general supervision of the business and have access to all the papers, records and files. After I saw the policy in the possession of my son it was placed in an envelope and mailed to the General Insurance Company of America. It was mailed by Raymond Graves. I have known Mr. Reynolds for a number of years. He was in our office during the next forenoon after the fire. My son Raymond and I were present. He made the statement that he wished he had paid the premium on that policy. I don't recall what was said in reply to that. Defendant's Exhibit 22 is a letter, is a copy of letter taken from our files on yesterday, copy written in September, 1926, to Mr. Reynolds, signed by Raymond Graves. The slip attached to the letter is a renewal slip that was supposed to be attached to the policy by Mr. Reynolds. This was taken from our files on yesterday. The signature of Raymond F. Graves appears upon the bottom of the letter. That is the signature of my son. I am reasonably familiar with the handwriting of R. A. Reynolds. The handwriting in the left hand corner written in ink is, in my opinion, the

handwriting of R. A. Reynolds. Defendant's Exhibit 22 was admitted in evidence over plaintiff's objection that no sufficient foundation had been laid; that it was immaterial, irrelevant and not in issue and not binding upon the plaintiff in this action, as no notice of demand was made upon the plaintiff. The exhibit is annexed to this Bill of Exceptions and made a part hereof and appears as Exhibit 22 herein.

CROSS-EXAMINATION

All I know about this letter is that it appears to have been written by Raymond. I recall that the policy was put in an envelope and mailed. I don't recall the time of day. It was the 4th day of October. I don't know the day of the week. I think no letter was written at the time. Just merely a notation made across the face of the policy. I saw it after the notation was made. I didn't tell you after this occurred that it was written across the face of the policy canceled in red ink. I didn't say red ink. I don't know how it was written—black ink—I don't recall the color. There was written across the face "lost to the Hardware Dealer's Mutual, October 4, 1928." I don't know that I saw him write it. I saw it after it was written. I am not sure as to whether it was in red ink. I think it was in black ink. That is my recollection. I have no particular recollection of putting any other

writinng on any other instrument of that kind that same day. I remember this particular instrument because I hated to lose the business. That was not the first policy I had lost that year. I don't recall when some other policy was lost. Reynolds had a large line of insurance and I was interested in holding it if I could. The size of the business impressed me at the time the policy was returned. I don't recall anything else that occurred in regard to this policy that fastened it upon my memory. I saw the policy after it was endorsed. It was put into an envelope and mailed to the General Insurance Company of America at Seattle. It was thrown in the file where we throw our letters for the mail. I am sure that it was not in red ink. I am not sure that it was in black ink. I think it was in ink. Whereupon the following question was asked and answer given:

"Q. Examine the endorsement on that and tell me how it is written. (Exhibit handed to witness.)

A. In pencil.

Q. Is it not in ink?

A. No, sir."

I think I am not mistaken as to what generally transpired on that particular day. I saw Reynolds in my office in the forenoon after the fire. No notice was given of the purported cancellation or termination of the policy to Mrs. Allen. I made no attempt to make a demand upon her for the payment of the premium. I think no attempt was

made to collect the premium from Mrs. Allen or any demand made for her through our office. I know I didn't make any attempt. Whereupon the following questions were asked and answer given:

"THE COURT: When you took over the insurance business from Mr. Anderson, did he deliver to you this policy?

A. I think not.

Q. When did you first notice the policy was there?

A. The first time I saw the policy was after Raymond returned from Twin Falls and returned with the policy and prepared to send it to the company about the 4th of October.

Q. That was in 1926?

A. Yes.

MR. BOTHWELL: What policies were turned over to you by Mr. Anderson.

A. I don't recall.

MR. GRAHAM: How many?

A. Possibly six or eight. I would not say exactly."

I don't recall any of them. He turned over the policies that had not been delivered; they were turned over to us to be delivered. When requested we keep policies for safe keeping for our policy holders. We have a large safe and sometimes we hold a policy. We keep an index file of policies left with us. This policy was not left with us. Because this being a large line of business we were

particularly anxious to take good care of it. I don't know that I have any distinct recollection outside of that fact. I have no particular recollection as to any other policy. I think that I would remember as to this policy because it was Reynolds Brothers and as I would any other merchant that had a large line we were anxious to hold this line of business. The premiums on Reynolds Brothers insurance amounted to $300 or $400 a year at that time. Several policies were turned over to us by Anderson, but not by any of the Reynolds boys. I am sure of that. I didn't examine the policies personally at that time or make a record of them. My son took the policies over. I saw the policies and there were probably six or eight or ten. I cannot tell the names of any of them. I know Reynolds Brothers' policy was not in them.

Whereupon RAYMOND GRAVES was recalled as a witness on behalf of the defendant and testified upon direct and cross-examination as follows:

DIRECT EXAMINATION

My attention has been called to defendant's Exhibit 22, which consists of two pieces of paper. My signature appears to this letter. I am fairly well acquainted with the handwriting of R. A. Reynolds. The writing on the left hand corner of that letter is in the hand of R. A. Reynolds. The slip is called

a renewal certificate. The renewal certificate is a certificate issued by the General Insurance Company previous to the time these policies come up each year for renewal and submitted to the Idaho Rating Bureau for their approval as to the rates that apply to that particular policy, as it is removed. Two copies of it are sent to us and one copy is retained by the home office at Seattle. We retain one for four files and as a rule send the other to the person who holds the policy. I recall writing the letter, Exhibit 22. I mailed it along with our usual mail to Reynolds Brothers at Twin Falls. The letter was returned to me afterwards with the notation in ink down in the left hand corner. That occurred about the date that appears on the letter. I was present in the office the morning after the fire when Mr. Reynolds came in. My father was there and Mr. Reynolds. Mr. Reynolds made the statement that he wished we had made him pay the premium on that policy. The policy had been sent in to the company approximately two years before that. I made the trip to Twin Falls for the express purpose of getting the policy and sent it to the company. I got it from Reynolds. His stenographer was present. My brother didn't go with me at that time. He went with me the morning after the fire. The time that I recovered the policy was two years before the fire.

CROSS-EXAMINATION

I wrote this letter after I had had the conversation with Reynolds, a few days before September 20, 1926, when he told me about the cancellation of the policy, we used every effort that we could to hold the business. This letter does not indicate that I had any conversation in regard to cancellation of the policy with Reynolds. I stated yesterday that it was agreed that the policy would be cancelled. I wrote the letter in an effort to do all that I could to hold the business. Occasionally a person will change his mind. I had a conversation with him on April 18th or 20th about the payment of the premium. I had not changed my mind as to the cancellation. I was going to give him every opportunity to change. It was agreed between Reynolds and myself on the 20th of September, 1926, or two days before that, that the policy would be cancelled. I wrote the letter because I wanted to give him an opportunity to change his mind. The policy was cancelled on October 4th. The date that I went to get the policy was not agreed upon. I merely happened to go back on October 4th to get the policy. It happened to be that day that I went with the intention of getting the policy. That was my purpose. It happened to have been on October 4th. It could have been October 5th or October 3rd. I recall no attempt to collect the premium after September 20th. I recall no other visits made by me between September 20, 1926, and October 4, 1926.

Whereupon, L. F. BECKER was recalled as a witness on behalf of the defendant and upon direct and cross-examination testified as follows:

"MR. BOTHWELL: Before asking Mr. Becker, in order to be certain as to the record, I understand we are not required to prove the agency by the certificate issued by the state, I understand that has has been waived.

THE COURT: Yes."

Mr. Graves' testimony as to the renewal certificates. That is the way in which it is handles.

"MR. BOTHWELL: We offer in evidence Chapter 48, Senate Bill No. 128, Laws of 1923, approved February 23rd, 1923, and particularly call attention to Section 6 thereof. We ask that the entire Act may be admitted in order to prove the relation of one section to the other.

THE COURT: It may be admitted."

Whereupon the same was admitted as Exhibit 23, and is annexed hereto and made a part of this Bill of Exceptions and appears as Exhibit 23 herein.

Whereupon the defense rests.

Whereupon, R. A. REYNOLDS was recalled as a witness on behalf of plaintiff on rebuttal and testified on direct and cross-examination as follows:

DIRECT EXAMINATION

My explanation as to this exhibit 22 is that that letter came into the office at a time when I was very

busy and I evidently did not look over the contents carefully. Undoubtedly I thought this referred to a merchandise policy which we were carrying with the old line company. I think the New Zealand. I think Graves was agent at that time—perhaps some other company—which we intended cancelling and placing with the Hardware Mutual. I had talked over with the assignee of the Filer Hardware Company some policies I had on merchandise stock in the New Zealand Company. I talked over with them the idea of changing it from the old line company—merchandise stock policy—to the Hardware Mutual and save 50% premium and they all were agreeable that we do that. The assignees were Mr. Shearer and Mr. Nichols. I afterwards took out insurance in the Hardware Mutual on the stock. I didn't at any time take out insurance on the building in the Hardware Mutual. I heard the testimony of Raymond Graves in regard to coming to our office about September 20th, 1926, or about two days before that, and he stated that that conversation was had in our place of business on Shoshone Street in Twin Falls. Our place of business in September 1926 was on Second Avenue South not Shoshone Street. We did not move to Shoshone Street until about the middle of January 1928. We moved at that time because we sold our merchandise stock, the hardware and implement stock, to the Mountain States Implement Company; they retained the building that we were in and we moved in January and

February, 1928. We were in the automobile business. We were not in that building in 1926 or 1927. We had a girl a portion of the time doing stenographic work and a bookkeeper in October 1926, when Raymond Graves spoke about a visit to our office on Shoshone Street in October 1926. The bookkeeper was Harvey Coggins. He had access to the records of the office and papers in the safe. The girl we had was doing stenographic work. She did not have access to the papers or have anything to do with the filing of papers. She simply attended to stenographic work. We had a girl just a portion of the time at that time, perhaps three or four hours a day. I would not be sure whether she was there at that time or not. Her line of duties were such that she would not have access to the safe and papers. Whereupon the following question was asked and answer given:

"Q. Speaking about the policy, did you have the policy at any time in your safe in your place of business?

A. No sir, not to my knowledge. I never had any safe in my place of business."

Yes, I remember we had two policies with the New Zealand and two or three more other companies. I cannot remember. The change was made on the policies on the stock to the Hardware Mutual. I heard the testimony of Ronald Graves in regard to a certain conversation that was had in my office on the day after the fire. I don't remember

any such conversation. I remember that Paul Taber was there in the office. Don't remember whether Ronald was there or not. I had some business with Taber. I don't know whether it was the next day after the fire Paul was in our office. Sometime after the fire.

"THE COURT: Do you recall stating that you wished they had made you pay this premium.

A. I don't.

MR. GRAHAM:

Q. You also heard the testimony of F. C. Graves as to a conversation in Filer the morning after the fire?

A. Yes, I was supposed to be in his office according to his statement. I don't think I was in Filer the next day. I was up all that night and I didn't get up until afternoon the next day. I slept all morning. I don't believe that I was in Filer that day at all."

I think I was in Graves' office after the fire. I heard his statement that the morning after the fire in his office that I made the statement that I was sorry that he hadn't made me pay the premium on the policy. I have no recollection of any such statement.

CROSS-EXAMINATION

MR. BOTHWELL: Did you have any hardware in this building when it burned?

A. Yes, we had some hardware but not a great deal.

Q. What hardware did you have?

MR. GRAHAM: I object to that as not proper cross examination upon rebuttal.

THE COURT: Sustained."

We had changed our insurance from the New Zealand. That was the only one that I can remember, to the Hardware Mutual, but I think there were two or three others. The Hardware Mutual did not have a local agent. I don't remember the man's name that was representing them. I think he lives here in Boise. As to the notation on the left hand corner of Exhibit 22 I am sure I don't remember having written that on that, but that is my writing. I cannot remember that I did write that on that corner. I don't remember having received the letter. As a matter of fact I didn't want to cancel this policy. I didn't want Graves to cancel it. The Roof Garden policy. No sir, I should say not. Whereupon the following questions were asked and answers given:

"Q. So that when you wrote that notation on the corner of this letter here, you say the only explanation you have is that you were busy and you think you did not read the letter.

A. I would doubt it very much, because my stating on there that it had been placed with the Hardware Mutual, I would naturally think that this referred to merchandise stock. I didn't take any pol-

icy on this building with the Hardware Mutual at that time. I doubt whether I would have put the statement on there if I had read the letter very carefully.

Q. It says here very plainly, Policy covering garage and dance hall building here—that is, in Filer—you had no other building or no other dance hall or no other garage building there?

A. No.

Q. The only one you had there, and that was the amount of the policy premium—$130.

A. A $10,000., policy.

Q. Do you remember that this renewal certificate was along with that letter.

A. I do not remember.

Q. Do you remember that you took out this policy with the General Insurance Company of America.

A. I remember I took out a $10,000., policy with the General Insurance Company of America.

Q. And if you did not want the policy canceled why didn't you pay the premium due on the 20th day of September, 1926.

A. I don't know unless it was not brought to my attention forcibly enough.

Q. Forcibly enough—why didn't you pay the premium due on September, 1927.

A. I do not know that I was ever billed for it—perhaps I wasn't.

Q. Perhaps you weren't bill for it?

A. No, sir.

Q. Didn't it occur to you when you didn't receive a bill in September, 1927 that there might be some reason that this policy was canceled?

A. No, I didn't pay a great deal of attention to the insurance policies—not much as I should have."

I placed my insurance ordinarily with Anderson, and when a premium would come due he would take care of it and come and collect. I think I would remember if I had surrendered a policy to Graves at Twin Falls on October 4, 1926. I would remember that particular policy, because that policy I took out was a five year policy. The reason I took that was that Arthur Anderson came to me and explained to me the advantages that I would have with a five year policy. That had a mortgage clause on it and is the only policy I took with the mortgage clause. They explained to me that advantage and that it would be, and that there would be a little saving on the premium over the old line company and I was converted to this particular policy. After I got the policy I was satisfied that that was off my mind for five years. I know the premiums were to be paid annually on the policy, I knew that. I think Mrs. Allen and I discussed that the premiums were to be paid annually on the policy; before the policy was taken out I told her that Anderson had talked to me about such a policy and I asked her permission—if it would be alright with her if I took out such a policy and she said it would. I inquired from

Anderson about three months ago in California as to where the policy was. I paid Anderson the first premium. I don't know whether it was cash. He always owed me, and we traded our accounts on premiums three or four months afterwards, just as Graves did. He would come around to collect his premium, and I would give him a check for his account at that time. We traded accounts. I did not inquire at the bank as to whether this policy had been deposited in the bank. I did not make any inquiry about that. I don't think I ever had any correspondence with Mrs. Allen in regard to the policy. I don't think that I wrote to her about it. I recall that Mrs. Allen was back to Twin Falls and Filer in June 1927. I recall paying interest on these notes in October 1927. She was there the same year. At the time she was there in June I think I remember her asking me if the insurance was alright or something. I don't remember. It was not discussed to any detail at all. I don't remember what I said to her at that time. Whereupon the following questions were asked and answers given.

"Q. Did you tell her it was there in the bank—policy in the bank—

MR. GRAHAM: I object to that as not proper cross-examination.

THE COURT: Overruled.

A. I don't think she asked me; if she didn't, I didn't tell her.

Q. What was she asking you about this?

A. I don't remember. I am not sure that the insurance was mentioned."

I didn't tell her at that time that I had a policy in the Hardware Mutual. I didn't tell her at that time that I had surrendered this policy, or that it had been canceled. When I was in Mr. Graves' office I don't remember making the statement that I wished that they had made me pay the premium. I don't recall any such statement. The building we were occupying in 1926 is a block east of where we are now, one-half block east on a different street entirely, around the corner and down the street. Mr. Coggins was our bookkeeper in 1926. The stenographer was not authorized to take anything out of the safe. I would say that I did not ever direct her to take anything out of the safe. I didn't ask her to take papers from the safe. I imagine we had insurance policies in safe in 1926 and 1927. I had had insurance policies in our safe for twenty years. We were cancelling policies and putting them in the Hardware Mutual at that time. We may have given Mr. La Hue a policy. I am not sure as to that.

GUY H. SHEARER was recalled as a witness on behalf of defendant and testified in rebuttal upon direct and cross-examination as follows:

DIRECT EXAMINATION

I am one of the assignees of the Filer Hardware Company. Mr. Nichols of the Salt Lake Hardware

Company is the other. Reynolds was agent for the assignees. I recall in 1926 that the question of renewing the policies on the Hardware stock in the New Zealand and some other companies came up and thought that the policies were taken out in the Hardware Mutual. He came to me and stated that he could get insurance in the Hardware Mutual at a greater saving as I recall, I stated that the New Zealand policies, two of them I believe at that time were $10,000., each, would expire soon. He wanted my permission to re-write the insurance in the Hardware Mutual, and I gave it to him. The Filer Hardware Company's place of Business in 1926 was on Second Avenue South. They never had their hardware business on Shoshone Street; they continued their hardware business on second avenue south until the assignees sold the entire stock and that, I think, was the first of 1928. He could not have possibly been on Shoshone Street in 1926 and 1927.

CROSS-EXAMINATION

In 1926 that store on Second Avenue South was just around the corner and half a block down, opposite the Munyon Auction ground. Mr. Reynolds said he was paying too much premium and wanted to change the policies from the New Zealand to the Hardware Mutual.

MR. GRAHAM: That is all of our evidence, Your Honor.

MR. BOTHWELL: That is all.

THE COURT: I think I will hear you at 1:30 on this. The question I desire counsel to discuss is the analysis of the testimony and also present whatever authorities you wish on the application of the legal principles involved, while we have it fresh in our minds. The impression I have at this time, I see no difficulty in applying the legal principles involved here. Of course counsel may be able to call my attention to some that I haven't in mind. The question I see involved here is the question of the analysis of the testimony, together with the contract of insurance and its provisions which include the mortgagee clause attached to the contract which becomes part of the contract. I will hear you at 1:30."

Whereupon oral argument was had at 1:30 and time given for filing briefs. Briefs were thereafter filed and on July 1st, 1929, the following opinion in writing was delivered by the court:

Whereupon the following memorandum opinion in writing was filed by the Court on July 1st, 1929:

(Title of Court and Cause)

No. 1393

MEMORANDUM OPINION

July 1929

W. D. GILLIS and John W. Graham, Attorneys for Plaintiff.

Bothwell & Chapman, Attorneys for Defendant.

CAVANAH, DISTRICT JUDGE:

The question arising upon the record is whether the plaintiff, as mortgagee, is entitled to recover upon a policy of fire insurance issued by the defendant on September 20, 1924, in the amount of $10,000, covering a two-story brick building, situated at Filer, Idaho, after the same had been destroyed by fire. The owner of the premises, previous to the execution of the policy, made a mortgage to plaintiff securing the balance remaining unpaid of $12,647.00, and delivered the policy to plaintic as further security for the debt secured by the mortgage. The defendant and the insured attached to the policy the standard form known as "mortgage clause with full contribution" executed by defendant, which provides that loss or damage under the policy shall be payable to the plaintiff, the mortgagee. On August 29, 1928, the building covered by the policy was totally destroyed by fire. At the time of the fire there was a balance of $10,313.80 due on the mortgage, and in due time plaintiff made proof of loss in the sum of $10,000. The defendant denied liability, and this action was brought to recover the full amount of the policy.

There seems to be no question under the evidence but that the amount of damages sustained by the fire exceeded the full face of the policy.

The defendant defends upon the ground that the policy became null and void as of 12:00 o'clock noon of September 20, 1926, and from that time ceased

to be in force for the reason that the mortgagors, Reynolds, acting for themselves and for plaintiff, failed to pay the then current annual premium to defendant as provided in the policy, and that about October 4, 1926, the Reynolds informed the agent of the defendant that they had replaced the insurance by a policy procured from another company, and at the time while acting for themselves and for plaintiff, delivered and surrendered the policy to the defendant to be cancelled, which was done.

The provision of the mortgage clause which is pertinent here as providing for loss or damage to be paid to the plaintiff, provides that the interest of the mortgagee in the insurance shall not be invalidated by any act or negligence of the mortgagor, or owner of the premises, and in case of such neglect of the owner or mortgagor to pay any premium due under the policy, the mortgagee, shall, on demand, pay the same, and that the defendant company reserves the right to cancel the policy at any time for the benefit of the mortgagee for ten days after notice to the mortgagee of such cancellation.

The controlling questions would seem to be, was R. A. Reynolds, one of the mortgagors, after the clause was attached to the policy, authorized to cancel the policy on October 4, 1926, and if not was it a five-year policy, or a policy for one year to be renewed only upon payment of premium in the manner provided in the mortgage clause?

A review of the testimony discloses that in April,

1924, the time when plaintiff left Filer, Idaho, for California, where she remained until after the property was destroyed by fire, the premises were insured, and before leaving Reynolds agreed with her to carry the insurance on the building at all times for the amount of $10,000. The policy then in force expired April 20, 1924, and Reynolds at that time took out the policy in question, and paid the annual premium until September 20, 1926, and the defendant company attached thereto the mortgage clause. No demand was ever made on plaintiff to pay the premium becoming due on Sept. 20, 1926, or any premium thereafter, or notice given to her that the premiums had not been paid or that the policy had been cancelled by the defendant. At the time the policy was written and the mortgage clause attached, Reynolds requested the agent of the defendant to place it in the safety deposit box of plaintiff at the First National Bank of Filer, which Reynolds says the agent then agreed to do. The policy was not taken to the bank, but was thereafter found in the possession of the agent of the defendant, marked "cancelled". There is some testimony that the policy was secured from Reynolds, and in response to a letter of Sept. 21, 1926, of the agent of the defendant, enclosing a renewal certificate of the policy and requesting payment of the premium then due, he stated that the policy had been placed "by Hardware Mutual" and to cancel it, and that there was found in the office of the agent of the defendant a

record reciting that the policy was cancelled October 4, 1926, but says that when he wrote the response he had in mind another policy. It is clear that the relation existing between plaintiff and Reynolds was that of mortgagor and mortgagee, with the understanding that Reynolds would carry the insurance on the building at all times, and the defendant had knowledge of that fact, as Reynolds paid the first two years' annual premiums and requested the mortgage clause to be attached to the policy, which informed the defendant that she held a mortgage on the premises, and in case of cancellation of the policy by reason of non-payment of premium, or otherwise, by the mortgagor, she should be notified and given time to protect her security with insurance as provided in the mortgage clause.

The first conclusion that arises from the dealings between the plaintiff and Reynolds is that he, as mortgagor, arranged with the defendant for the insuring of the premises, with no authority given to him to cancel the policy. The character of the agency, if any existed, is a disputed issue of fact, and presents the question as to whether the scope of authority conferred upon Reynolds was large enough to embrace all purposes connected with the placing of the amount of insurance. As has been said, we have here a situation where Reynolds, the mortgagor, had secured the insurance from the defendant with the mortgage clause attached to the policy for the protection of plaintiff's mortgage, and

when that was done the defendant company agreed, by attaching the mortgage clause, to deal with her as mortgagee in the manner provided in the mortgage clause before the policy could be cancelled or forfeited. The evidence indicates the absence of any desire upon the plaintiff's part to empower Reynolds by his voluntary act to create a situation giving him authority to cancel the insurance, but merely requested that the property already insured be kept insured. The mere fact that Reynolds may have had possession of the policy and requested its cancellation would not be sufficient to constitute authority from the plaintiff to cancel the policy, in the face of the provision in the mortgage clause requiring the company to give the mortgagee notice of such cancellation, which was intended to guard against such act of the mortgagor and for the protection of the mortgagee so that she could keep the property insured for the protection of her loan; otherwise the provision in the mortgage clause requiring the insurer to deal with the mortgagee would be of no avail. The neglect and acts of the mortgagor and the insurer left the plaintiff without knowledge of the cancellation of the policy and unprotected, which the defendant had expressly agreed not to do by the provision in the mortgage clause. The mortgage clause became a separate contract between the plaintiff and the defendant, and she having a large loan on the property was entitled to have the insurer comply with its terms. So I am

unable to find from the evidence sufficient testimony to convince me that the plaintiff authorized Reynolds, the mortgagor, to act for her in cancelling the policy, even if he did so, or that the acts of Reynolds were sufficient to bind her in that regard. The mere fact that the mortgagor agrees to insure the mortgaged premises, and thereafter directs the insurer to cancel the policy, in face of the provision contained in the mortgage clause requiring the insurer to notify the mortgagee of any cancellation or default in payment of premium, does not grant him authority to cancel it, unless that authority is plainly and unequivocally conferred or is waived by the mortgagee. The authority of the agent is determined by the terms of the request made by the principal. A case analagous to the present one is City of New York Inc. Co. v. Jordon, et al., 284 F. 429, where the court said (syllabus): "An agent to procure insurance is not authorized to cancel it unless that authority is plainly conferred, and it is not plainly conferred by a request by the owner of property already insured that it be kept insured and to keep him insured at any time any company cancelled a policy." It is now settled that "an agent to procure insurance is not from that engagement alone authorized to effect a cancellation of the policy,"—Michelsen v. Franklin Fire Insurance Co., 36 Ida. 638; Lauman v. Concordia Fire Insurance Co., 195 Pac. 951. Nor is the mortgagor who was to carry insurance at his expense under an agreement be-

tween him and the mortgagee authorized to cancel it or the insurer to declare it cancelled without giving the mortgagee notice and demanding payment of the premium as provided in the mortgage clause, for if such were not the case the mortgage clause would be of no protection to the mortgagee against the negligent acts of the mortgagor. The phrase "to carry insurance at all times on the premises by the mortgagor" means nothing more than to secure insurance, and does not carry with it the general authority sometimes granted to an agent or broker to do everything necessary to effect the insurance and terminate it.

The objection that the plaintiff should not recover because the policy is one for one year with the privilege of continuing the insurance from year to year during the term of five years may be disposed of briefly. It is urged that by that provision of the policy the company agreed to insure the applicant for a term of five years from year to year, and in such case the option is left with the insured as to whether he wishes to continue or renew the policy or withdraw. The essential provision of the policy necessary to a consideration of this question reads as follows:

> "Amount $10,000.00 Rate $1.68 Premium $130.00
>
> IN CONSIDERATION of the stipulations herein named and of One Hundred Thirty and

40/100 Dollars First Annual Premium, and by the payment of the then current annual premium to this Company, at or before 12 o'clock noon, on or before the 20th day of September in every year, renewing from year to year within said term, does insure C. L. and R. A. Reynolds for the term of five years from the 20th day of September, 1924, at noon, to the 20th day of September, 1929, at noon, against all direct loss or damage by fire except as hereunder provided - - -"

It seems clear by the above provision that the policy was a five year term policy for $10,000, payable upon loss or damage by fire. The premium was payable annually in advance. The first premium of $130.00 was paid for the year commencing Sept. 20, 1924, and for subsequent years to Sept. 20, 1926. The expression in the policy "does insure C. L. and R. A. Reynolds for the term of five years from the 20th day of September, 1924, at noon, to the 20th day of September, 1929, at noon" makes it clear that the policy is one for a term of five years and continues in force during that period, provided the annual premiums are paid in advance at or before twelve o'clock noon of September 20th in each year. If the insured chooses to pay the premium each year in advance, the company was obligated to carry the insurance for a term of five years, and it was only subject to termination if the annual premium was

not so paid. Miller v. West. Union Life Inst. Co., (Wash.) 180 Pac. 488.

This construction was no doubt the intention of the parties, as we find indorsed by the company on that part of the original policy produced, "Expires Sep. 20, 1929," and at the top of the second page of the agent's record, Exhibit "3", in a summary of the contents of the policy, the language "Term five years." Effective Sept. 20, 1924." The provisions of this policy are similar to the provisions found in life insurance policies, and it is generally held as to these policies that where a term is expressed for life or a definite number of years the policy is a continuing contract for the term therein expressed, subject only to forfeiture for non-payment of premium. In the case of McMasters v. New York Life Ins. Co., 78 F. 33, the court said: "A life policy, delivered upon payment of the first year's premium, is a continuing contract for the life of the insured, subject to be forfeited for non-payment of premiums, and not merely a contract for a year, renewable by payment of subsequent premiums."

There does not seem to be any ambiguity in the language contained in this policy, as it seems clearly to convey the idea that the parties intended the policy to be for a term of five years and to remain in force during that period as long as the annual premiums are paid in advance as provided therein.

A liberal construction should be placed on contracts of insurance to uphold them, as they are pre-

pared by the insurer and the conditions contained in them which create forfeitures will be construed most strongly against the insurer. Haas v. Mutual Life Ins. Co., 121 N. W. 996. The payment of the annual premium is only a condition subsequent to the continuation of the policy, and the non-performance of which may incur a forfeiture of the policy or may not, according to the circumstances, and it is always open for the insured to show a course of conduct on the part of the insurer which gave the insured reasonable ground to infer that a forfeiture would not be exacted. Thompson v. Insurance Co., 140 U. S. 252. So recognizing this principle the court should look further than the provisions of the policy to ascertain if the insurer has by its conduct permitted the mortgagee to pay the premium upon demand and notice, if default is had by the insured, and if so such contract or course of conduct should be considered, together with the original policy, in order to determine if the policy was at the time claimed forfeited for non-payment of premium. As has been said, when the policy was issued by the company a mortgage clause was attached, executed by the company, and was made a separate contract with the plaintiff mortgagee to the effect that loss or damage, if any, under the policy, shall be paid to the plaintiff mortgagee as her interest may appear, and the policy shall not be invalidated by any act or neglect of the mortgagor, and in case the mortgagor shall neglect to pay any premium due

under the policy the mortgagee shall, on demand, pay the same, and the company reserves the right to cancel the policy at any time as provided by its terms, and in such case it shall continue in force for the benefit only of the mortgagee for ten days after notice to the mortgagee of such cancellation, and shall then cease.

These provisions of the mortgage clause of the contract, as we have seen, were not complied with by the company. There was no notice given to plaintiff of the neglect of the mortgagor to pay the premiums, or demand made upon her by the company to pay the same, or the ten days notice required to be given to her for the cancellation of the policy. In fact, she being in California at the time of the default in payment of the premiums had no knowledge of it, or that the policy was cancelled by the company, until after the property was destroyed by fire when she was then informed for the first time. She had a right to assume that under the provisions of the contract she had with the company the premiums had all been paid promptly and no cancellation was claimed by the company. Had the company complied with these terms of the mortgage clause contract, she could have protected her loan by either acquiring the mortgagor to secure other insurance, or done so herself. That was the purpose of the mortgage clause contract. The company failing to so comply with its contract with her becomes liable under the policy for the amount of the

loss and damage occasioned by the fire in the sum of $10,000. principal, and interest thereon from the date of its denial of liability, October 16, 1928. Intermountain Ass'n. of Credit Men v. Milwaukee Mechanics Ins. Co., 44 Ida. 491.

Accordingly judgment, with costs, may be entered for plaintiff.

And on July 2nd, Judgment was entered by the Clerk as follows:

(Title of Court and Cause)

No. 1393

JUDGMENT

This cause having come on regularly on the 29th day of April, 1929, the issues in this action being brought to trial before Honorable Charles C. Cavanah, United States District Judge, at a term of this court held at Boise, Idaho, the plaintiff appearing by her attorneys, W. D. Gillis and John W. Graham, and the defendant by its attorneys, Messrs. Bothwell & Chapman, a jury being waived, and the court having heard the allegations and proofs of the parties, and the arguments of counsel for said parties, and having taken the decision in said cause under advisement, and after due deliberation having duly made its decision in writing in favor of the plaintiff and against the defendant, now on said decision and on motion of W. D. Gillis, one of plaintiff's attorneys,

IT IS ORDERED, ADJUDGED AND DECREED, That plaintiff, Rosa M. Allen, recover of the defendant, General Insurance Company of America, a corpration of Seattle, Washington, the sum of $10,000.00, together with interest thereon from the 16th day of October, 1928, to this date at the rate of seven per cent (7%) per annum, or the sum of $495.80, together with costs of this action taxed at $————, or a total judgment in the sum of $————, and have execution therefor.

Judgment signed and entered this 2nd day of July, 1929, at——P. M.

.....

Clerk.

On July 11th, 1929, the following stipulation in writing was signed by respective counsel and filed, to-wit:

"It is stipulated and agreed by and between counsel for the respective parties to this action, as follows:

I.

That the opinion of the Court was filed in the cause on July 1st, 1929.

II.

That Counsel for Defendant received a copy of said opinion through the mail at Twin Falls, Idaho, on July 2nd, 1929.

III.

That the time may be extended up to and including August 1st, 1929, within which Counsel for Defendant may serve upon Counsel for Plaintiff, a draft of a proposed Bill of Exceptions, as provided by Rule 76 of the above entitled Court.

Dated this July 11th, 1929.

W. D. GILLIS
JOHN W. GRAHAM
Attorneys for Plaintiff,
Residence Boise and Twin Falls, Idaho.
JAMES R. BOTHWELL
W. ORR CHAPMAN
Attorneys for Defendant."

And the following order was made and filed on July 11th, 1929:

"Upon the written Stipulation of Counsel for respective parties being filed herein,

IT IS ORDERED that the time be, and the same is, hereby extended up to and including August 1st, 1929, within which Counsel for Defendant, may serve upon Counel for Plaintiff, a draft of a proposed Bill of Exceptions as provided by rule 76 of this Court.

Dated this 11th day of July, 1929.

CHARLES C. *CAVANAUGH*
Judge."

On July 11th, 1929, defendant moved that special findings be made by the Court and filed an affidavit

of James R. Bothwell in support of the motion. The motion and affidavit are as follows:

"MOTION

"Comes now the Defendant and moves, that special findings be made by the Court in this Cause.

This Motion is based upon the records, papers and files herein, together with the Affidavit of James R. Bothwell, one of the Attorneys for the Defendant.

JAMES R. BOTHWELL
W. ORR CHAPMAN
Attorneys for Defendant,
Residence Twin Falls, Idaho."

"STATE OF IDAHO,)
)ss
COUNTY OF ADA.)

James R. Bothwell being duly sworn, deposes and says; that he is one of the Attorneys for the Defendant in the above entitled action; that Defendant's case was submitted to the Court for decision upon a written brief, prepared in the office of Bothwell & Chapman at Twin Falls, Idaho, and filed with the Clerk of this Court; that in typewriting said brief, the operator inadvertently left out a request, which had been dictated to be included in said brief, asking that the Court make special findings in this cause and stated as a reason therefor, that in the opinion of Counsel for Defendant, under the pleadings and evidence in this cause, special findings were necessary, in order to fully and fairly under-

stand the facts, upon which a judgment of the Court would be based, and to adequately protect the rights of the Defendant upon appeal, should one be taken. And that said error was not discovered until after receipt of a copy of the decision of the Court by Counsel for the Defendant on July 2nd, 1929 at Twin Falls, Idaho.

Affiant further states, that in his opinion, special findings of fact are necessary to avoid injustice and to permit a full and fair hearing as to the sufficiency of the facts to sustain the decision of the Court and that this is a case wherein provisions of Rule 100, of this Court, should be applied.

JAMES R. BOTHWELL.

Subscribed and sworn to before me this 11th day of July, 1929.

B. F. NEAL
Notary Public,
Residence Boise,
Idaho."

"Service of the within Motion and Affidavit filed in support thereof, admitted by receipt of a true copy, this 11th. day of July 1929.

W. D. GILLIS.
JOHN W. GRAHAM.
Attorneys for Plaintiff,
Residence Boise and Twin Falls,
Idaho."

Objections to Defendants Motion for Special

Findings were filed on behalf of plaintiff on July 18th, 1929, as follows:

"OBJECTIONS TO MOTION OF DEFENDANT FOR SPECIAL FINDINGS.

COMES NOW the plaintiff, by and through her attorneys of record, and objects to this Court considering or granting the motion of the defendant above named for special findings, which motion is supported by the affidavit of James R. Bothwell, one of the attorneys of record for the defendant, said affidavit being dated the 11th day of July, 1929, for the following reasons:

1. That this Court has no jurisdiction at this time to consider or grant the prayer of said motion for the following reasons:

a. That no Written request, or request of any other kind or character, for special findings was made by the defendant herein to this Court prior to the entry of the judgment herein on the 2nd day of July, 1929, as required by Rule No. 63 of this Court.

b. That said motion and request for special findings of the defendant herein is insufficient in form and substance, even if the Court had jurisdiction to make the same.

2. That said motion and request for special findings is insufficient in law to require findings of any kind by this court.

3. That the reasons assigned for the request for findings, the same being made nine days after judgment herein, are frivial and show no legal excuse why the rules of this Court and particularly rule No. 63 should be modified or suspended.

Reference to the files and records in this case are hereto made and the same are made a part of these objections.

Dated this 17 day of July, 1929.

W. D. GILLIS,
Residence: Boise, Idaho.
JOHN W. GRAHAM
Residence: Twin Falls, Idaho.
Attorneys for Plaintiff.

Due and legal service of the above Objection is hereby acknowledged this 17th day of July, 1929.

JAMES R. BOTHWELL
W. ORR CHAPMAN.
Attorneys for Defendant."

Defendant's motion for special findings was denied on July 22, 1929, the order stating:

"Now, on this 22nd day of July, 1929, this cause coming on for hearing upon the motion of the defendant for special findings, filed in this court on the 11th day of July, 1929, together with the objections filed thereto by the plaintiff, and the court now being fully advised in the premises

IT IS ORDERED That said motion be and the same is hereby overruled and denied.

CHARLES C. CAVANAH
District Judge."

On July 26th, 1929 the following order was entered:

"Upon consideration,

IT IS ORDERED that the time be, and the same is hereby extended up to and including August 12th, 1929, within which counsel for defendant may serve upon counsel for plaintiff a draft of a proposed bill of exceptions as provided by Rule 76 of this Court.

Dated: Boise, Idaho, July 26th, 1929.

CHARLES C. CAVANAH.
District Judge."

Whereupon, on July 30th, 1929 the defendant made the following request in writing which was filed and presented to the Court:

"REQUEST FOR DECLARATION OF LAW IN FAVOR OF DEFENDANT.

And now comes the defendant herein during the term at which judgment was rendered in favor of plaintiff and against the defendant and requests a declaration of law as follows:

"The court declares the law to be that under the pleadings, contract of insurance and evidence in this case, the plaintiff is not entitled to recover against the defendant, General Insurance Company of

America, and the decision and judgment of the court is in favor of the defendant."

Dated this 29th day of July, 1929.

JAMES R. BOTHWELL.
W. ORR CHAPMAN.
Attorneys for Defendant,
Residing at Twin Falls, Idaho.

Service of the within Request for Declaration of Law in Favor of Defendants this 29th day of July, 1929, by receipt of a copy thereof.

W. D. GILLIS.
JOHN W. GRAHAM.
Attorneys for Plaintiff."

Objections to defendant's Request for Declaration of Law in favor of defendant were filed on behalf of plaintiff on July 30th, 1929, as follows:

"COMES NOW The plaintiff, by and through her attorneys of record, and objects to this Court considering or granting the request of the defendant above named for declaration of law in favor of defendant for the following reasons:

1. That this Court has no jurisdiction at this time to consider or grant the prayer of said request for the following reasons:

a. That no written or oral request for declaration of law in favor of defendant was made by the defendant herein to this court prior to the entry of the judgment herein on the 2nd day of July, 1929.

b. That said request for declaration of law for and in behalf of the defendant is insufficient in form and substance.

2. That no valid reason or excuse has been assigned for the request being made at this time.

Dated this 30th day of July, 1929.

W. D. GILLIS,
Residence: Boise, Idaho.
JOHN W. GRAHAM.
Residence: Twin Falls, Idaho.
Attorneys for Plaintiff."

and said request was entertained by the Court and denied by Order entered on July 30th, 1929. At the time the Court ruled on defendant's said request, defendant excepted to the ruling of the Court and moved for an order allowing defendant's exception and fixing the time within which a bill of exceptions may be reduced to writing. Defendant's exception in writing and motion for an order allowing the exception and fixing the time within which a bill of exceptions may be reduced to writing, and the order of the Court are in words and figures as follows, to-wit:

"EXCEPTION AND MOTION

And now comes the defendant at the time the ruling is made by the court upon defendant's request for a declaration of law "that under the pleadings, contract of insurance and evidence in this case

the plaintiff is not entitled to recover against the defendant, General Insurance Company of America, and the decision and judgment of the court is in favor of the defendants," and excepts to to the ruling of the court denying said request, and moves for an order allowing defendant's exception to said ruling and fixing the time within which a Bill of Exceptions herein may be reduced to writing and settled and signed by the Judge of this Court and granting defendant until and including Aug. 12, 1929 from this date within which to serve upon the attorneys for the plaintiff a draft of a proposed Bill of Exceptions herein.

Dated this 30th day of July, 1929.

JAMES R. BOTHWELL.
W. ORR CHAPMAN.
Attorneys for Defendant,
Residing at Twin Falls, Idaho."

"ORDER

"And now on this day defendant's request for a declaration of law "that under the pleadings, contract of insurance and evidence, plaintiff is not entitled to recover and the decision and judgment of the court is in favor of the defendant" is denied and the defendant thereupon excepting to the ruling of the court and requesting the court to fix the time within which a Bill of Exceptions to said ruling may be reduced to writing and settled and signed by the

judge of this court. Upon consideration it is ORDERED that defendant may have an exception to the ruling of the court denying its said request and that a Bill of Exceptions to the court's ruling on defendant's said request may be reduced to writing and settled and signed by the Judge of this court as provided by Rule 76 of this court; and it is further ORDERED that the defendant may have until and including August 12th, 1929 within which to serve upon the attorneys for plaintiff a draft of the proposed Bill of Exceptions herein as provided by said Rule 76 of this court.

Dated and signed this 30 day of July, 1929.

CHARLES C. CAVANAH
Judge."

Upon his own motion, the Court entered the following Nunc Pro Tunc Order Correcting Judgment on July 30th, 1929:

"A judgment was entered in the above entitled case on the 2nd day of July, 1929, in the sum of $10,000.00, together with interest thereon from the 16th day of October, 1928, to the 2nd day of July, 1929, at the rate of 7% per annum in the sum of $495.80, and it appearing to the court that the annual premium on the policy of insurance in question due September 20, 1926, and that the annual premium due September 20, 1927, in the sum of $130.40 for each year had not been paid by the mortgagee or the mortgagor herein and that the

defendant is entitled to a credit on said judgment and interest for said two years' annual premium with interest from the date that said annual premium fell due to July 2nd, 1929, at 7% per annum in the sum of $302.46, principal and interest, and a mistake was made in not allowing said credit upon said amounts so found due the plaintiff and that the judgment so entered on the 2nd day of July, 1929, should have contained a provision for said credit in the sum of $302.36 and that said judgment should be corrected in that regard by a Nunc Pro Tunc order as of the date of July 2nd, 1929:

It is Therefore Ordered and Adjudged that the judgment entered in said above entitled cause on the 2nd day of July, 1929, be, and the same is hereby, amended by inserting after the words "on the sum of $495.80" on the second line of the second page of said judgment the following: "Less a credit in the sum of $302.36, being premium and interest on policy for two years to July 2nd, 1929, leaving a net balance due from the defendant to the plaintiff herein for principal and interest in the sum of $10,193.44".

It Is Further Ordered and Adjudged that said amendment shall take effect as of July 2, 1929, the date of the entry of said judgment.

Dated this 30th day of July, 1929.

CHARLES C. CAVANAH.
District Judge."

The following Petition for a New Trial on behalf of defendant was served upon counsel for plaintiff on July 31st, and filed on August 1st, 1929, to-wit:

"And now comes the defendant, General Insurance Company of America, and petitions the court that the opinion and decision of the court filed in this cause and the judgment made and entered in favor of plaintiff and against the defendant on July 2nd, 1929, be set aside and a new trial be granted upon the following grounds:

1. Errors in law occurring at the trial namely:

(a) The court erred in overruling defendant's demurrer to plaintiff's complaint;

(b) The court erred in finding generally in favor of plaintiff and against defendant for the reason that the defendant is entitled to a declaration of law in this case as follows: "the court declares the law to be that under the pleadings, contract of insurance and evidence in this case the plaintiff is not entitled to recover against the defendant, General Insurance Company of America, and the decision and judgment of the court is in favor of the defendant";

(c) The court erred in admitting evidence over the objection of counsel for defendant as specifically set forth in Exhibit "A" hereunto annexed and made a part hereof;

(d) The court erred in ordering judgment entered in favor of plaintiff and against the defendant without a provision contained in the judgment "that

upon payment of said judgment to the mortgagee the defendant shall, to the extent of such payment, be subrogated to all of the rights of the mortgagee, and that the defendant shall receive a full assignment and transfer of the mortgage and all other securities held by plaintiff," as provided in Condition 5 of the mortgage clause attached to the insurance policy in question.

2. Insufficiency of the evidence to justify the decision, and that the decision is against law in the following particulars:

(a) The evidence shows without contradiction that plaintiff appointed R. A. Reynolds as her agent with full power to insure the property in question, to select the insurer and to surrender the policy in question for cancellation to the agent of defendant;

(b) The uncontradicted evidence shows that R. A. Reynolds, agent of plaintiff, surrendered the policy in question to defendant's agent for cancellation and notified defendant's agent in writing that the insurance upon the property had been placed with the Hardware Mutual Insurance Company;

(c) The evidence shows without contradiction that plaintiff knew, or could have known by the exercise of ordinary care, that her agent, R. A. Reynolds, had not placed the policy in question in her safety deposit box in the First National Bank of Filer, Idaho, and that plaintiff allowed the policy to remain out of the safety deposit box and under the control of plaintiff's agent, R. A. Reynolds, and

thereby placed within his control to surrender the policy for cancellation;

(d) The evidence shows, without contradiction, that the plaintiff had no dealings whatever with defendant except through R. A. Reynolds, and plaintiff having received the benefits of insurance for the years 1924 and 1925 through the contract of insurance secured by the said R. A. Reynolds is now estopped from denying that Reynolds was her agent and was acting within the scope of his authority when he surrendered the policy for cancellation;

(e) The uncontradicted evidence shows that the immediate cause of cancellation of the policy was the failure of Reynolds to place the policy in the safety deposit box in the First National Bank of Filer, but on the contrary retaining the policy in his possession and thereafter surrendering the policy to defendant's agent, with a statement in writing that the policy had been replaced in the Hardware Mutual Company, and the uncontradicted evidence further shows that plaintiff opened the safety deposit box and knew, or by the use of her natural senses could have known, that the policy was not, in fact, in the safety deposit box, and that at the time the mortgagors were in default upon the mortgage, and plaintiff is, therefore, estopped from contending that the policy was not surrendered for cancellation with her knowledge and consent;

(f) The evidence shows without contradiction that the surrender of the policy for cancellation by

R. A. Reynolds, as "was not an act or neglect of the mortgagor," whereby the policy was invalidated within the meaning of the mortgagee clause attached to the policy, but was an act in furtherance of the agreement between plaintiff and R. A. Reynolds that Reynolds would keep the building insured, select the insurer, pay the premiums, replace the insurance in a company to the mutual advantage of plaintiff and mortgagors and place the policy in the First National Bank at Filer, Idaho;

(g) It is shown by the uncontradicted evidence that plaintiff ratified the act of R. A. Reynolds in surrendering the policy for cancellation and prior to the loss;

(h) It is shown upon the uncontradicted evidence that the term of insurance under the policy in question was from 12 o'clock Noon on September 20, 1924, to 12 o'clock Noon September 20, 1925, and from 12 o'clock Noon, September 20, 1925, to 12 o'cock Noon September 20, 1926, and that said policy of insurance expired at Noon on September 20, 1926, and was not renewed for the year September 20, 1926, to September 20, 1927, and was not in effect on the date of the loss of the building in question by fire.

3. The decision is against law for all of the reasons as stated above that the evidence is insufficient to justify the decision.

The application for a new trial in this case is to be made upon the pleadings, minutes of the court,

evidence produced at the trial, exhibits, reporter's transcript of his shorthand notes and the refusal of the court to grant defendant's request for a declaration of law as follows: "The court declares the law to be that under the pleadings, contract of insurance and evidence in this case the plaintiff is not entitled to recover against the defendant, General Insurance Company of America, and that the decision and judgment of the court is in favor of the defendant," and upon the court's refusal to make special findings in this cause.

Dated this 31st day of July, 1929.

JAMES R. BOTHWELL.
W. ORR. CHAPMAN.
Attorneys for Defendant."

On August 8th, 1929, the following Order was entered by the Court:

"Upon consideration,

IT IS ORDERED, that the time be and the same is hereby extended up to and including August 15th, 1929, within which counsel for defendant may serve upon counsel for plaintiff a draft of a proposed bill of exceptions as provided by Rule 76 of this Court.

IT IS FURTHER ORDERED that time be and the same is hereby extended up to and including August 15th, 1929, within which counsel for defendant may serve upon counsel for plaintiff draft of proposed bill of exceptions covering denial by the

Court of defendant's request for a declaration of law, filed in the above entitled cause on July 30th, 1929.

Dated; Boise, Idaho, this 8th day of August, 1929.

CHARLES C. CAVANAH.
District Judge."

(Title of Court and Cause)

No. 1393

COPIES OF EXHIBITS

PLAINTIFF'S EXHIBIT NO. 1
ADMITTED

THIS INDENTURE, Made this 29th day of November, in the year of our Lord one thousand nine hundred and fifteen between Henry Jones and Willmoth Jones, his wife, of Hollister County of Twin Falls, State of Idaho, the parties of the first part, and Richard A. Reynolds and Charles L. Reynolds, co-partners doing business under the firm name of Filer Hardware Company, of Filer, County of Twin Falls, State of Idaho, parties of the second part.

WITNESSETH, That the said parties of the first part, for and inconsideration of the sum of One and No/100 Dollars of the United States of America, to them in hand paid by the said parties of the second

part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, and sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all the following described real estate, situated in Twin Falls County, State of Idaho, to-wit:

Lots Eighteen (18), Nineteen (19), Twenty-seven (27), Twenty-Eight (28) and Twenty-Nine (29) in Block Fourteen (14) in the village of Filer, as shown by the final and amended plat of Filer Townsite now on file in the office of the recorder for Twin Falls County, Idaho.

This deed is given as a correction deed to correct deed given July 17th, 1915, by the grantors herein covering lots herein described and recorded Nov. 27, 1915.

TOGETHER With all and singular the tenements, hereditaments, and appurtenances thereunto belonging and in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever.

And the parties of the first part and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the
Presence of
F. C. Graves

Henry Jones (Seal)
Willmoth Jones (Seal

STATE OF IDAHO)
)ss
County of Twin Falls)

On this 29th day of November in the year 1915, before me W. Homer Craven, a Notary Public in and for said State, personally appeared Henry Jones and Willmoth Jones, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal, the day and year in this certificate first above written.

W. Homer Craven
Notary Public

My commission expires on the 27th day of Jul. 1918

(W Homer Craven Notary Public)
( )
(Twin Falls County, Idaho)

STATE OF IDAHO)
)ss
Coounty of Twin Falls)

CERTIFICATE OF TRUE COPY - RECORDER

I, Harry C. Parsons, Ex-officio Recorder, in and for Twin Falls County, State of Idaho, do hereby certify that the hereto annexed is a full, true and correct copy of the original warranty deed from Henry Jones and Willmoth Jones, his wife, to Richard A. Reynolds and Charles L. Reynolds co-partners doing business under the firm name of Filer Hardware Company, as same appears on the records of said Twin Falls County, in Book 34 of Deeds, at page 248.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 15th day of April A. D., 1929.

(Sgd.) Harry C. Parsons
Ex Officio Recorder

(Sgd.) By Dorothy McRill, Deputy

(ENDORSEMENTS)

WARRANTY DEED.

Henry Jones and
Willmoth Jones his wife
to
Richard A. Reynolds and
Charles L. Reynolds

STATE OF IDAHO)
)ss
County of *Idaho*)

I h e r e b y certify that this instrument was filed for record at request of A. D. Hughes
at 48 minutes past 10
o'clock A.M., this 18th day of
February, A.D., 1916, in my office
and duly recorded in Book 34 of Deeds
at Page 248

E. J. Finch
Ex-Officio Recorder

Fees $1.25.

PLAINTIFF'S EXHIBIT NO. 3
ADMITTED

AGENT'S RECORD.
GENERAL INSURANCE COMPANY OF AMERICA
Seattle, Washington

INSURANCE MAP

This space reserved for Company's Use
TOTAL NET LINE

No. 1D601926
Renews No. new
Cancels No.
Assured's Mailing Address.
Filer, Idaho

On same Within 100 feet Sheet 5
$..... $..... Block 29
Recorded..... Street No. 204
Mapped..... Page 1 Line 13
Amt.Reinsured.....
P.M.L.....

This Space reserved for Company's use
Agent's No. Quar City County State Dept. Class Prot. Con. Div.

Amount $10,000.00 Rate 1.63 Premium $130.40

IN CONSIDERATION of the stipulations herein named and of One Hundred Thirty and 40/100 Dollars First Annual Premium and by the payment of the then current annual premium of this Company, at or before 12 o'clock noon, on or before the 20th

day of September in every year, renewing from year to year within said term, does insure C. L. and R. A. Reynolds for the term of five years from the 20th day of September, 1924, at noon, to the 20th day of September, 1929, at noon, against all direct loss or damage by fire except as hereinafter provided, TO AN AMOUNT NOT EXCEEDING Ten Thousand and no/100 Dollars on the following described property, while located and contained as herein described, and not elsewhere to-wit:
Standard Forms Bureau Form 76

BUILDING FORM (MERCANTILE)

On the following described property, all situate on the northwest corner of Main Street and Park Avenue, Sanborn Fire Map Sheet 5, Block 29, Street No. 204, Filer, Idaho.

1. $10,000.00 On the two story comp. roof brick building and its additions (if any) of like construction communicating and in contact therewith, including foundations, sidewalks, plumbing, electrical wiring and stationary heating and lighting apparatus and fixtures; also all permanent fixtures, awnings, wall and ceiling decorations and frescoes, stationary scales and elevators, belonging to and constituting a part of said building, only while occupied for hardware & implement store, and dance hall purposes

2. $ nil On.....

3. $ Nil On.....

No insurance attaches under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Other insurance permitted

Loss, if any, subject however to all the terms and conditions of this policy, payable to assured

"Tenants' Improvements" spearately insured for a specific amount under this, or any other policy, are not covered by this policy except for such specific amount, if any, named herein.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. ID-601926 of the General Insurance Company. Agency at Filer Idaho. Dated September 20th, 1924

Insurance Map
Sheet 5
Block 29
204

(Sgd) Arthur E. Anderson
Agent

For other provisions see reverse side of this rider.

(Following on back of foregoing rider)

Provisions Referred to in and Made Part of this Rider No. 76.

"Vacancy." If building described hereunder is located within the incorporated limits of a city or town, permission is hereby granted for same to remain vacant or unoccupied without limit of time.

"Permits". Permission granted to make alteration or repairs to the above described building without limit of time, and to build additions, and if of like construction and communicating and in contact therewith, this policy shall cover on same under its respective items pertaining thereto; permission also granted to do such work in said building as the nature of the occupancy may require; to work at any and all times; and, when not in violation of law of ordinance, to generate illuminating gas or vapor, and to keep and use the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it being warranted by insured that no artificial light (other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such breach. But notwithstanding anything herein contained, the use, keeping, allowing, or storing on the within described premises of dynamite, fireworks, Greek fire, gunpower in excess of fifty pounds, nitro glycerine or other explosives is prohibited and shall wholly suspend this policy during the period such use, keeping allowing or storing shall continue unless a specific permit therefor is attached to this policy.

"Lightning Clause" This policy shall cover any direct loss or damage by lightning (meaning thereby the commonly accepted use of the term "lightning" and in no case to include loss or damage by cyclone, tornado, or windstorm) not exceeding the sum insured nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy; provided, however, that if there shall be any other insurance on said property this company shall be liable only pro rata with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not.

"Electrical Exemption Clause." If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are inusred by this policy, this insurance shall not cover any immediate loss or damage to d y n a m o s, exciters, lamps, motors, switches, or any other apparatus for generating utilizing, testing, regulating, or distributing electricity, caused directly by electric currents therein whether artificial or natural.

Standard Forms Bureau Form 371.

MORTGAGEE CLAUSE WITH FULL CONTRIBUTION

(To be attached only to policies covering buildings.)

Loss or damage, if any, under this policy, on buildings only, shall be payable to Rose M. Allen

Mortgagee (or Trustee) as interest may appear. Subject to all the terms and conditions hereinafter set forth in this rider, this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy.

Condition One—In case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Condition Two—The mortgagee (or trustee) shall notify this company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee), and unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

Condition Three—This company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation, and shall

then cease; and this company shall have the right, on like notice to cancel this agreement.

Condition Four—In case of any other insurance upon the within described property, this company shall not be liable under this policy for a greater proportion of any loss or damage sustained than the sum hereby insured bears to the whole amount of insurance on said property, issued to or held by any party or parties having an insurable interest therein, whether as owner, mortgagee or otherwise.

Condition Five—Whenever this company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of her claim.

Attached to Policy 1D-601926 of the General Insurance Company.

Issued to C. L. and R. A. Reynolds

Agency at Filer, Idaho

Dated, September 20th, 1924.

(Sgd.) Arthur E. Anderson,
Agent.

GENERAL INSURANCE COMPANY OF AMERICA

AGENTS INSPECTION REPORT AND POLICY ORDER.

Assured C. L. and R. A. Reynolds Address Filer, Idaho

Amount $10,000.00 Rate $1.63. Premium $130.00 Policy No.ID601926.

Covers on $10,000.00 on two story brick building with composition roof.

Location on the northwest corner of Main St. and Park Ave., Sanborn Fire Map Sheet 5, Block 29, Street No. 204, Filer, Idaho.

Name and Address of Mortgagee Rose M. Allen c/o G. H. Shearer, Filer, Ida.

Term 5 years Effective Sept. 20, 1924. Deliver Policy to.....

QUESTIONS TO BE ANSWERED ON ALL RISKS.

1. Construction of Building Brick
2. Kind of Flues Brick
3. Do any stove pipes, terra cotta, tile or cement flues pass thru partitions, floor ceilings or roof? No.

State which?.....If so, how secured, how near wood.....

4. Are all flues & stove pipes in safe condition Yes
5. Are there any unprotected vertical openings between basement and first floor, what No.
6. What is moral standing of assured Excellent
7. Is there any other insurance on this property No.
8. Is assured sole owner of the property assured Yes.
9. If not, what is his title.....
10. Is property in litigation or dispute No.
11. How long has assured resided here 17 years
12. Is risk on graded street on paved street.
13. How far from hydrant across street
14. How far from fire Dept. 1½ blocks
15. Is wiring in good condition yes
16. Any electric cords hung on metal of any kind No.
17. Are empty boxes, barrels, rubbish permitted to accumulate in rear of building No
18. Has assured ever had a fire yes
19. If so, give details Filer Hdw. Co. Inc., burned about four years ago.
20. Has any company ever cancelled or rejected assured's risks No.
21. Have you personally examined risk Yes
22. What date 8/11/24 If insured, state value

of personal property $..... Is it encumbered.....

23. Do you unqualifiedly recommend this risk as up to the standard required by the General Insurance Company of America Yes

QUESTIONS TO BE ANSWERED ON MERCANTILE BUILDINGS AND DWELLINGS.

1. When built about 1918
2. Present value about $25,000
3. Present condition good
4. Kind of roof composition
5. Kind of Foundation concrete.
6. When last painted.....
7. Number of rooms, except halls, closets, bath.....
8. Are all rooms finished.....
   How .....
9. Fitted with bath.....
10. How lighted electricity
11. How heated hot water heat
12. Is there a basement yes
13. Size 15 ft. x 25 ft. x.....ft.
14. How floored not floored

Dimensions of Main Building.

15. ..... story.....ft.x.....ft.
    x.....Studding.
    Wing.....story..... x ..... x .....
    Studding

Addition size..... x ..... x .....
Studding

16. Size of porches.....

OCCUPANCY OF BUILDING.

Basement Hot water boiler 1st Floor Hardware & implement 2nd Floor Dance Hall
Other floors.....by owner of tenant
.....

If tenant, state monthly rental received $.....
(Mezz. floor: doctors' offices.)

QUESTIONS TO BE ANSWERED ON MERCANTILE STOCKS

1. How often is inventory taken.....
2. When was last one.....
3. What was value of stock then.....
4. What is present value of stock.....
5. What is amount of annual sales.....
6. Are books kept of purchase.....
7. Is sales record kept.....
8. Will records be kept in iron safe.....
9. How long has assured conducted this business
.....
10. Did they start with new stock or buy out some one.....

DESCRIPTION OF BARNS, GRANARIES, OUTBUILDINGS ON FARMS

1. Frame, box or post.....
2. Outside, finished or rough.....

3. When built.....
4. General condition.....
5. Cost to build.....
6. Present value.....

Dimensions (measure from base to eaves)
Main Building..... ft.x ..... x ft.
.....Posts. 1st Shed.....ft x .....
ft x ..... Posts. 2nd shed&&.....
ft x .....Posts

Barn No. 2 Gave same information.....

Granary

1. When built..... 5. Kind of Roof.....
2. Is it Frame..... Length.....
3. Is it painted..... 6. Present value.....
4. Outside, finished or Width.....
rough.....Dimensions Height.....

Remarks .....

If risk is not mapped draw diagram of risk and exposing buildings, showing distance in feet between buildings

Show how rate is computed if not specially rated
Rate according to book no.....

1. Basis .....$
2. Exposure charges .....$
3. Deficiency charges .....$
4. Concrete flue .....$
5. Cloth lining .....$.....

Total Rate .....$.....

Special Rate Page Line.....

6. Has this Company any other insurance in block? If so, give amount, name, policy No. Policy No. ID-601925 in favor of Reynolds Bros. for $3,000.

Filer Idaho Agency

Inspected by (Sgd) Arthur E. Anderson

PLAINTIFF'S EXHIBIT NO. 4
ADMITTED

Filer, Idaho. March 2, 1926 Check No. 4770

To FIRST NATIONAL BANK, Filer, Idaho

FILER HARDWARE CO., Inc. Hardware, Furniture, Implements. Filer, Idaho $197.96

PAY- - - - One Hundred Ninety-Seven Dollars and Ninety-Six Cents

To the Order of F. C. Graves

FILER HARDWARE CO. Inc.
(Sgd.) R. A. Reynolds,
Agent

(INDORSEMENTS)

For deposit only

F. C. GRAVES

By R. F. G.

PLAINTIFF'S EXHIBIT NO. 5
ADMITTED

Filer, Idaho March 2, 1926 Check No. 4770

Voucher No. .....

To FIRST NATIONAL BANK

FILER HARDWARE CO., Inc. Hardware, Furniture, Implements. Filer, Idaho $197.96

Record of Payment One Hundred ninety-seven Dollars Ninety-six Cents

Made to F. C. Graves DUPLICATE.

FILER HARDWARE CO., Inc. Est.
By R. A. Reynolds
Agent

Detach statement before depositing

FILER HARDWARE CO., Inc.

Filer, Idaho

When detached and paid the above check becomes a receipt in full payment of the following account
No other receipt necessary
Discount Other Deductions

Date for	Description amount	Amount net amt.	c/o Amount

Insurance $197.96
Gager Dwelling Filer $15.00
Charge to Ins.Expense
Postoffice Bldg. 52.56
Roof Garden Bldg. 130.40

Chg. to a/c R.A. & C.L.Reynolds

(INDORSEMENTS)

Distribution

Account	Detail	Amount
86 Insurance		$15.00
17 Ac. R.	(?) (not decipherable)	182.96
		$197.96

(Following attached to foregoing Exhibit 5)

STATEMENT

Reynolds Bros.

Twin Falls, Idaho

F. C. GRAVES,

Real Estate, Loans, Insurance.

Acc. C. R. & R. A. Reynolds, Insurance

May 20	Dwelling Gager Res. Filer	$15.00
Sept. 1.	Postoffice Building	52.56
Sept. 19.	Roof garden building	130.40
		$197.96

Acc. R. A. Reynolds, Agent

Feb. 12, Castleford Building	$ 43.50
Feb. 12, Stock, Twin Falls Store	160.00
	$ 203.50

PLAINTIFF'S EXHIBIT NO. 6
ADMITTED

$2525.95

Due June 20th, 1922 Twin Falls, June 20th, 1919

Three years after date I, we, or either of us promise to pay to the order of Rose M. Allen Two Thousand Five Hundred Twenty-Five and 95/100--Dollars for value received at the First National Bank, Filer, Idaho, with interest thereon at the rate of seven percent per annum from date payable annually in United States gold coin, with a reasonable sum as attorney's fees, if this note is collected by an attorney, either with or without suit.

(Sgd.) Richard A. Reynolds
" Dorothy Reynolds
" Charles L. Reynolds
" Helen J. Reynolds

Address Filer Idaho

(INDORSEMENTS)

Jul. 15, 1920, Interest paid to June 20, 1920
Oct. 15th, 1921 " " " June 20, 1921
June 20th, 1923 " " " " " 1922
" " " " " " " 1923

" " 1924
" " 1925
" " 1926
Oct. 20th, 1927 " " " " " 1927
(52c Revenue Stamps Attached)

(PLAINTIFF'S EXHIBIT NO. 7 ADMITTED)

$2525.95

Due June 20th, 1923 Twin Falls, Idaho, June 20th, 1919

Four years after date, I we or either of us promise to pay to the order of Rosa M. Allen Two Thousand Five Hundred Twenty-Five and 95/00----Dollars for value received at the First National Bank, Filer, Idaho, with interest thereon at the rate of seven per cent per annum, from date, payable annually in United States gold coin, with a reasonable sum as attorney's fees, if this note is collected by an attorney, either with or without suit.

(Sgd.) Richard A. Reynolds
" Dorothy Reynolds
" Charles L. Reynolds
" Helen J. Reynolds

Address Filer, Idaho.

(INDORSEMENTS)

Jul. 15, 1920, Interest paid to June 20, 1920
Oct. 15th, 1921 " " " June 20, 1921

June 20th, 1923 " " " " " 1922
" " " " " " " 1923
" " " 1924
" " " " " " " 1925
" " " 1926
Oct. 20th, 1927 " " " " " 1927

(52c Revenue Stamps Attached)

(PLAINTIFF'S EXHIBIT NO. 8 ADMITTED)

Due June 20th, 1924 Twin Falls, Idaho, June 20th, 1919.

Five years after date, I, we, or either of us promise to pay to the order of Rosa M. Allen Two Thousand Five Hundred Twenty-five and 95/100----Dollars for value received, at the First National Bank, Filer, Idaho, with interest thereon at the rate of seven per cent per annum, from date, payable annually in United States gold coin, with a reasonable sum as attorney's fees, if this note is collected by an attorney, either with or without suit.

(Sgd.) Richard A. Reynolds
Dorothy Reynolds
Charles L. Reynolds
Helen J. Reynolds

Address Filer, Idaho

(INDORSEMENTS)

July 15th, 1920, Interest paid to June 20, 1920
Oct. 15th, 1921 " " " June 20, 1921

June 20th, 1923	"	"	"	"	"	1922
"	"	"	"	"	"	1923
				"	"	1924
"	"	"	"	"	"	1925
				"	"	1926
Oct. 20th, 1927	"	"	"	"	"	1927

(52c Revenue Stamps Attached.)

PLAINTIFF'S EXHIBIT NO. 9
ADMITTED

Filer, Idaho, August 26th, 1921

On or Before January 1st, 1922, after date, for value received, and without grace, I, we, or either of us promise to pay to the order of Rosa M. Allen of Filer, Idaho, $2.000.00 Two Thousand and no/100----Dollars in lawful money of the United States of America, at Reynolds Brothers Company of Filer, Idaho, with interest thereon in like money from date until paid, at the rate of 7% percent per annum. Interest to be paid when due and if not so paid the whole sum of both principal and interest to become immediately due and collectible. Should this note be collected by an attorney, with or without suit, a reasonable attorney's fee shall be allowed the holder. The sureties, guarantors and endorsers of this note severally waive presentation for payment, protest and notice of protest.

(Sgd.) R. A. and C. L. Reynolds
per R. A. Reynolds

(INDORSEMENTS)

Rec'd interest in full to June 20th, 1923, amt. $363.29

6/20/26 Rec'd. interest in full to June 20th, 1926

6/20/26 Rec'd. on price of water note.....$93.89

(40c Revenue Stamps Attached)

PLAINTIFF'S EXHIBIT NO. 10
ADMITTED

THIS INDENTURE, made this 20th day of June in the year of Our Lord one thousand nine hundred and Nineteen between Richard A. Reynolds and Dorothy Reynolds, his wife, and Charles L. Reynolds and Helen Reynolds, his wife of Filer, County of Twin Falls, State of Idaho, the parties of the first part, and Rosa M. Allen of Filer, County of Twin Falls, State of Idaho, the party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Twelve Thousand Six Hundred and Twenty-nine and 73/100 ($12,629.73) Dollars, lawful money of the United States, do by these presents GRANT, BARGAIN, SELL and CONVEY unto the said party of the second part, and to her heirs and assigns FOREVER, all that certain real property situate in the County of Twin Falls and State of Idaho, and bounded and particularly described as follows, to-wit:

Lots Twenty-eight (28) and Twenty-nine (29) in Block Fourteen (14) in the village of Filer, Twin Falls County, State of Idaho, according to the Final and Amended Plat thereof on record in the Recorder's office of said county, together with the tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining.

THIS GRANT is intended as a Mortgage to sesure the payment of five certain promissory notes of even date herewith, executed and delivered by the said Richard A. Reynolds and Dorothy Reynolds, his wife, and Charles L. Reynolds and Helen Reynolds, his wife, to the said party of the second part. These notes are all for the principal sums of $2525.95 each and due as follows: One on June 20, 1920, one on June 20, 1921; one on June 20, 1922; one on June 20, 1923 and one on June 20, 1924; all bearing interest at the rate of 7% per annum, said interest to be paid annually.

And these presents shall be void if such payment be made. But in case default shall be made in the payment of the said principal sums of money or any part thereof as provided in the said notes, or if the interest be not paid as therein specified, or if the taxes, water maintenance, or payments of principal or interest on any prior lien or incumbrance be not paid, second party shall have the right to pay the same, and then it shall be optional with the said party of the second part, her executors, administrators or assigns, to consider the whole of

said principal sums expressed in said notes as immediately due and payable; and immediately to enter into and upon all and singular the above described premises and to sell and dispose of the same according to law, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory notes, together with the costs and charges of foreclosure suit, including reasonable counsel fees and also the amounts of all such payments of taxes, assessments, incumbrances or insurance as may have been made by said second party, her heirs, executors or assigns, with the interest on the same at the rate of 7 per cent per annum, rendering the overplus of the purchase money (if any there shall be) unto the said parties of the first part, their heirs, executors, administrators or assigns.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Sgd.) Richard A. Reynolds (Seal)
" Dorothy Reynolds (Seal)
" Charles L. Reynolds (Seal)
" Helen J. Reynolds (Seal)

Signed, Sealed and Delivered in the Presence of
(Sgd.) H. C. Hazel.

STATE OF IDAHO)
)ss
County of Twin Falls)

On this 20th day of June, 1919, before me H. J.

Benoit, a Notary Public in and for said county personally appeared Richard A. Reynolds and Dorothy Reynolds, his wife, and Charles L. Reynolds and Helen Reynolds, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Sgd.) H. J. Benoit
(Seal) Notary Public, Twin Falls, Idaho.

(INDORSEMENTS)
No. 107970

MORTGAGE
Richard A. Reynolds, et al
to
Rosa M. Allen,
STATE OF IDAHO,)
)ss
County of Twin Falls)

I hereby certify that this instrument was filed for record at the request of Hazel and Benoit at 18 minutes past 4 o'clock P. M., this 20 day of June, 1919, in my office and duly recorded in Book 57 of Mtgs.at page 420.

(Sgd.) C. C. Siggins
Ex-Officio Recorder
By John F. Hansen, Deputy

Fee $1.50 Pd.

Return to Mrs. R. M. Allen, Filer, Ida.

(PLAINTIFF'S EXHIBIT NO. 12
ADMITTED)

(Title of Court and Cause)

NOTICE TO PRODUCE ORIGINALS

TO GENERAL INSURANCE COMPANY OF AMERICA, defendant above named, and JAMES R. BOTHWELL and W. ORR CHAPMAN, its attorneys of record:

You, and each of you, are hereby notified to produce and have in court, in the Federal Court Room, in Federal Court Building in Boise, Idaho, on the 29th day of April, 1929, at 10 o'clock A. M. of said day, the same being the time that said above entitled cause has been set for trial, the following documents, instruments and papers, to-wit:

1. The original letter written by W. D. Gillis of Filer, Idaho, then attorney for plaintiff in said above entitled action, dated Sept. 20, 1928, to defendant company.

2. The original letter written by W. D. Gillis of Filer, Idaho, then attorney for plaintiff in the above entitled action, dated October 1, 1928, to the defendant company.

3. The original letter written by W. D. Gillis of Filer, Idaho, attorney for plaintiff herein, dated Oct. 11, 1928, to the defendant company.

4. The original proof of loss mailed to defendant on Oct. 11, 1928, by W. D. Gillis of Filer, Idaho, attorney for plaintiff.

Dated this 11th day of April, 1929.

(Sgd.) W. D. GILLIS, Res. Boise, Ida.
JOHN W. GRAHAM, Res. Twin Falls
Attorneys for Plaintiff

(PLAINTIFF'S EXHIBIT NO. 13
ADMITTED)

W. D. GILLIS,
Lawyer,
Filer, Idaho.
September 20th, 1928.

General Insurance Company of America,
Seattle, Washington

Gentlemen:

Under your policy ID601926 you covered C. L. and R. A. Reynolds for $10,000.00 on the following described property, all situate on the Northwest corner of Main St. and Park Av. Sanborn Fire Map Sheet 5, Block 29, Street No. 204, Filer, Idaho.

This policy also provided under a mortgage clause that the loss or damage, if any shall be payable to Rose M. Allen, Mortgagee.

On August 29th, 1928, at about the hour of 2 A.

M. this property was totally destroyed by fire. Notice of such loss has been served upon your representatives F. C. Graves and Son, Filer, Idaho, who advise that our insurance had lapsed.

We are desirous of filing proof of loss to present our claim to you under conditions covered by the policy contract and the provisions of the mortgage clause, and we therefore hereby ask that you either send your adjuster to review our claim or else send us a blank proof of loss, that we may complete at this end and file with you for further reference and action.

Trusting this may have your prompt attention, I am,

Very truly yours,
(Sgd.) W. D. Gillis,
Attorney for C. L. and R. A. Reynolds
and Rosa M. Allen.

WDG-GS
Register

PLAINTIFF'S EXHIBIT NO. 14
ADMITTED

Directors
O. D. Fisher, Chairman
J. A. Humbird
Frank B. Martin
A. W. Middleton
Henry McCleary
W. L. McCormick

Cable Address
(General)

J. P. McGoldrick
Geo. J. Osgood
C. D. Stimson
W. H. Talbot
H. D. Kent, President

GENERAL INSURANCE COMPANY
OF AMERICA
Seattle

September 24, 1928

Mr. W. D. Gillis,
Filer, Idaho.

Dear Sir:

With reference to your registered letter of the 20th instant, we cannot find that we have any policy covering the property mentioned, although we have already paid for a loss to the adjoining property which was damaged at the time of the fire in question.

May we not hear further from you about the policy mentioned in your letter and when and how it was issued and how it covered?

Yours very truly,

GENERAL INSURANCE CO. OF AMERICA
(Sgd.) Geo. H. Belt,
Claim Department.

Geo. H. Belt:ea

PLAINTIFF'S EXHIBIT NO. 15
ADMITTED

W. D. GILLIS
Lawyer
Filer, Idaho.

October 1st, 1928

General Insurance Company
of America
White Building
Seattle, Washington
Mr. Dent Fire Undr

RECEIVED
Mr. Belt Aut. Dv.
OCT. 4, 1928
Aud'ting Reinsurance
Serv. Sup End. Can'd.
Mr. Lamping A. I. A.

Attention of George H. Belt, Claim Department.

Dear Sir:

I have yours of September 24th, in reply to mine of September 20th, 1928, in reference to Policy ID601926 covering the property of C. L. and R. A. Reynolds for $10,000 with mortgage clause payable to Rosa M. Allen, mortgagee.

This policy is dated September 20th, 1924, and was written by your agent, Arthur E. Anderson and covered a building at the corner of Main Street and Park Avenue, Sanborn Fire Map Sheet 5,

Block 29, Street No. 204, Filer, Idaho. It was a two-story brick building.

The policy was written for a term of five years at a rate of $1.63. It is claimed by the Reynolds Brothers, that no notice was given them of the premium for the year September 20th, 1927, to September 20th, 1928. This is denied by your agent, F. C. Graves & Son. It is admitted by the last named agent that no notice of any kind was given to the mortgagee. This insurance was taken over by F. C. Graves & Son, late in the fall of 1924 or '25.

We again renew our request that you either send your adjustor to review our claim or send us blanks upon which we can make proof?

May we have your prompt reply?

Yours very truly

(Sgd.) W. D. Gillis.

WDG:GS.

PLAINTIFF'S EXHIBIT NO. 16
ADMITTED

Directors
O. D. Fisher, Chairman
J. A. Humbird
Frank B. Martin
A. W. Middleton
Henry McCleary
W. L. McCormick
J. P. McGoldrick

Geo. J. Osgood
C. D. Stimson
W. H. Talbot
H. K. Dent, President

GENERAL INSURANCE COMPANY
OF AMERICA

Seattle

October 5, 1928

Re: FW-808 ID-601926
C. L. Reynolds

Mr. W. D. Gillis,
Attorney at Law,
Filer, Idaho

Dear Sir:

We have your letter of October 1st. We have written for additional information with reference to this claim and when such information comes into our hands, shall be glad to advise you definitely as to our attitude.

Yours very truly,

GENERAL INSURANCE COMPANY
OF AMERICA
By (Sgd.) Ralph S. Pierce
Claim Department

Ralph S. Pierce
fl

PLAINTIFF'S EXHIBIT NO. 17
ADMITTED

W. D. GILLIS
Lawyer
Filer, Idaho.

October 11th, 1928.

In re Policy No ID 601926

General Insurance Company of America,
White Building
Seattle, Washington
Gentlemen:

I have your letter of October 5th which says in effect only that you have written for additional information in reference to above policy.

I enclose herewith, on behalf of my client, Rose M. Allen, in whose favor, as mortgagee, Standard Form 371 as an endorsement was attached to Policy ID601926 of C. L. and R. A. Reynolds, whose property was totally destroyed by fire on August 29th, 1928, thereby wiping out the security of the said mortgagee for her mortgage.

I enclose you herewith Proof of Loss on behalf of said Mortgagee, Mrs. Rose M. Allen.

Your Agency here has admitted to a number of people, among them myself and Mrs. Allen that conditions two and three of Form 371, were not complied with. We are therefore complying with the policy contract and supplying you herewith the said Proof of Loss by registered letter, as a basis for

such future action as may be necessary to secure observance of its terms by you.

For your information, we have attached copies of both Form 76 and Form 371, as attached to the original policy.

Yours very truly,

(Sgd.) W. D. Gillis,
Attorney for Rose M. Allen

WDG:GS
Enc.—Proof of Loss.

PLAINTIFF'S EXHIBIT NO. 18
ADMITTED

Directors

O. D. Fisher, Chairman
J. A. Humbird
Frank B. Martin
A. W. Middleton
Henry McCleary
W. L. McCormick
J. P. McGoldrick
Geo. J. Osgood
C. D. Stimson
W. H. Talbot
H. K. Dent, President

Cable Address
"General"

GENERAL INSURANCE COMPANY
OF AMERICA

October 16th, 1928.

Mr. W. D. Gillis,
Filer, Idaho.

ID-601926—REYNOLDS

Dear Sir:

This will acknowledge receipt of your registered letter of the 11th enclosing the Proof, signed by Rose M. Allen, by yourself, in connection with the fire damage of August 29th last, but we are quite at a loss to understand your motive in this matter, in view of the fact that the policy under which this Proof is apparently submitted is in our files, cancelled.

Yours very truly,
GENERAL INSURANCE CO. OF AMERICA
(Sgd.) Geo. H. Belt
Claim Department

Geo. H. Belt: ea

PLAINTIFF'S EXHIBIT NO. 19
ADMITTED

No. of Policy ID601926 Amt of Policy $10,000.00

PROOF OF LOSS
to the
GENERAL INSURANCE COMPANY
OF AMERICA of Seattle, Washington
of Seattle, Washington

BY YOUR POLICY OF INSURANCE NO. ID 601,926 issued at your Agency at Filer, Idaho, said insurance commencing at 12 o'clock noon on the 20th day of September, 1924, and terminating at 12 o'clock noon, on the 20th day of September, 1929, you insured C. L. and R. A. Reynolds (hereinafter called the Insured), against loss and damage by fire to an amount not exceeding Ten Thousand and no/100-----Dollars according to the stipulations and conditions printed in said Policy, the written portion, together with a correct copy of all endorsements, assignments and transfers, being as follows:

STANDARD FORMS BUREAU FORM 76
(Pasted to above Exhibit)

BUILDING FORM (MERCANTILE)

On the following described property, all situate on the northwest corner of Main Street and Park Avenue, Sanborn Fire Map Sheet 5, Block 29, Street No. 204, Filer, Idaho.

1. $10,000.00 on the two story comp. roof brick building and its additions (if any) of like construction communicating and in contact therewith, including foundations, sidewalks, plumbing, electrical wiring and stationary heating and lightning apparatus and fixtures; also all permanent fixtures, awnings, wall and ceiling decorations and frescoes, stationary scales and elevators, belonging to and constituting a part of said building, only which

occupied for hardware & implement store, and dance hall purposes.

2. $ Nil On.....
3. $ Nil On.....

.....

No insurance attaches under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Other insurance permitted.

Loss, if any, subject however to all the terms and conditions of this policy, payable to assured.

"Tenants' Improvements" separately insured for a specific amount under this, or any other policy, are not covered by this policy except for such specific amount, if any, named herein. The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. ID-601926 of the General Insurance Co. Agency at Filer, Idaho. Dated September 20th, 1924.

INSURANCE MAP
Sheet 5
Block 29
No. 204

ARTHUR E. ANDERSON
(Sgd.) Arthur E. Anderson

STANDARD FORMS BUREAU FORM 371
(Pasted to above Exhibit)

MORTGAGE CLAUSE WITH FULL CONTRIBUTION

(To be attached only to policies covering buildings.)

Loss or damage, if any, under this policy, on buildings only, shall be payable to Rose M. Allen, Mortgagee (or Trustee) as interest may appear. Subject to all the terms and conditions hereinafter set forth in this rider, this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy.

Condition one.—In case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Condition two.—The mortgagee (or t r u s t e e) shall notify this company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased

hazard for the term of the use thereof; otherwise this policy shall be null and void.

Condition three.—This company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee), for ten days after notice to the mortgagee (or trustee) of such cancellation, and shall then cease; and this company shall have the right, on like notice to cancel this agreement.

Condition four.—In case of any other insurance upon the within described property, this company shall not be liable under this policy for a greater proportion of any loss or damage sustained than the sum hereby insured bears to the whole amount of insurance on said property, issued to or held by any party or parties having an insurable interest therein, whether as owner, mortgagee or otherwise.

Condition five.—Whenever this company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest, and

shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of her claim.

Attached to Policy No. ID-601926 of the General Insurance Co.

Issued to C. L. and R. A. Reynolds

Agency at Filer, Idaho Dated Sept. 20th, 1924

ARTHUR E. ANDERSON

Trade Mark Agent

STANDARD

371 (Sgd.) Arthur E. Anderson

July 1917

Loss, if any, payable to Rose M. Allen.

(a) A fire occurred, which commenced about the hour of 2 o'clock A. M. on the 29th day of August A. D. 1928, by which the property described in said Policy was destroyed, and/or damaged, as herein set forth, and which originated from unknown cause.

(b) The interest of the insured and of all others in the property described in said policy was at time of fire:

Interest of Insured, Owners.

Interest of all others than the Insured Rose M. Allen, mortgagee.

At the time of the issuance of said policy and at

all times thereafter the title of insured to the ground on which the building described in said policy stood was as follows: C. L. and R. A. Reynolds.

(c) The cash value of the different articles or properties and the amount of loss thereon, is stated in detail in the inventory furnished, and in schedule attached hereto and made part hereof.

(d) All encumbrances thereon: Rose M. Allen, first mortgage $12,647.00.

(e) All other insurance, whether valid or not, covering any of said articles or properties, is set out in the apportionment table or in the schedules provided for under (f).

(f) A copy of the descriptions and schedules in all other policies, unless similar to this policy, is furnished in the schedule of other insurance herewith and made part hereof.

(g) Any change of title, use, occupation, location, possession or exposures of said property since the issuance of this policy.

Change of title None

Change of use None

Change of occupation None

Change of location None

Change of possession None

Change of exposures None

(h) By whom and for what purpose any building herein described, and the several parts thereof, were occupied at the time of the fire.....

First floor by Implement store by Filer Hardware Co. Estate all other floors by Upper floor dance hall. F. J. Dell, Twin Falls, Ida. and for no other purpose whatever.

The cash value of each specified item thus located and described in the aforesaid policy at the time of the commencement of the fire, the loss and damage by said fire for which claim is hereby made, the total insurance, the total claim for loss under the total insurance and the insurance and claim under said policy are, viz.:

Property Items of Policy, 1st Item.

Total Sound Cash Value, $30,000.
Total Cash Loss and Damage, $30,000.
Total Insurance by Companies, $10,000.
1st Item.
Total Ins.. Under Clause.

Total Claim Under the Total Insurance, $10,-000.00.

Insurance Under This Policy, $10,000.00.

Claim Under This Policy, $10,000.00.

AND THIS INSURED HEREBY CLAIMS from the said INSURANCE COMPANY the sum of TEN THOUSAND and No/100------DOLLARS IN

FULL SATISFACTION OF ALL LIABILITY UNDER SAID Policy for loss and damage by said fire.

The said fire did not originate or continue by any act, design, procurement or wilful neglect on the part of this insured, or on the part of any person having any interest, direct or indirect, in the insured property or in the said policy of insurance, or in consequence of any fraud or evil practice done or permitted to be done by this insured; nothing has been done to violate the conditions of the policy to render it void, or to cause it to be suspended at the time of the fire; no claim is made for loss by theft, or for loss by the neglect of this insured to use all reasonable means to save and preserve the property at the time of and after said fire.

All the articles and property named herein and in the schedules furnished herewith on which claim for loss is made were owned by, or held by, this insured at the time of the commencement of the fire; all of the saved property has been accounted for and exhibited to the representative of the said Insurance Company, and no attempt to deceive the said Company as to the amount of the loss to the property described in said policy of insurance has been made by this insured. Any other information that may be required will be furnished when called for and all bills, invoices, schedules and statements made by this insured and attached to, or referred to, in this proof of loss are incorporated herein and made a part hereof.

The furnishing of this blank to Insured, or making up proofs by adjuster or any agent for above named company, is not to be considered as a waiver of any rights of the company.

Witness my hand at Filer, Idaho, this 11th day of October, 1928.

(Sgd.) Rose M. Allen
By W. D. Gillis,
Her Attorney Insured

Personally appeared W. D. Gillis, Attorney for Rose M. Allen signer of the foregoing statement, who made solemn oath to the truth of the same and that material fact is withheld that the said Company should be advised of, before me, this 11th day of October, 1928.

(Sgd.) Earl S. LaHue

Notary Public in and for the State of Idaho, residing at Filer, Idaho.

(Seal) My commission expires March 17, 1929.

Apportionment of Loss Showing Amount Insured By and Claimed from Each Company.

First Item General Ins. Co. of America, Loss $.

Second Item.....Loss $.

No. of Policy, ID 601926.

Name of Company, General Insurance Co. of America.

Insured, 10,000.

Claimed, $10,000.

Insured, Claimed, None.

STATEMENT OF LOSS

On August 29th, 1928, at about hour of 2 o'clock A. M. a fire occurred causing a total loss of this building, $30,000.00.

DEFENDANT'S EXHIBIT NO. 20
ADMITTED

Oct. 7, 19.....(Year not decipherable)

STANDARD FIRE INSURANCE POLICY
Stock Company (Participating Plan)
No. ID601926

Expires September 20th, 1929.
Property 2 story brick.
Amount $10,000.00.
Assured Reynolds Brothers.

GENERAL
INSURANCE COMPANY
of
AMERICA

Seattle, Washington

(Following written in pencil across fact of Policy:)

Cancelled—Lost to Hardware Dealers Mutual—R. P. Graves—Oct. 4, 1926.

ARTHUR E. ANDERSON
AGENT
FILER, IDAHO

It is important that the written portions of all Policies covering the same property read exactly alike. If they do not they should be made uniform at once.

(Following attached to Exhibit No. 20)

RENEWAL CERTIFICATE

Policy No. ID-601926.

Renewed for one year 9-20-27.

Amount $10,000.00. Rate $1.30. Premium $130.00.

APPROVED ONE YEAR ONLY

2

IDAHO

Jul. 20, 1926

S. & R.

BUREAU

Chief Examiner

General Insurance Company of America.

(Following attached to Exhibit No. 20)

RENEWAL CERTIFICATE

Policy No. ID 601926.

Renewed for one year to 9/20/26.

Amount $10,000.00. Rate $1.63. Premium $130.40.

APPROVED ONE YEAR ONLY

2

IDAHO

Aug. 12, 1925

S. & R.

BUREAU
Chief Examiner
General Insurance Company of America.

DEFENDANT'S EXHIBIT NO. 21
ADMITTED

9-20-26 EFF. Reason 13. Reins Nov. 3. Bookkr Oct. 14 26. Statis Oct. 14 26. Pol. Rcd. 10-7-26. Div. Pd. File Nov. 5 '26.

RE-INSURANCE 3-997 Tab.

No. 1 D601926 From 9/20/24 To 9/20/29.

Assured Reynolds C L & R A

Add Filer Idaho

CANCELLED Filed R. A.

Aug. 15.

WHSE

Loc. NW COR MAIN ST & PARK AVE

D-ND N-U LK LP AGE QUAR 6, CITY 47, CO 42, STA 3, AGT 604, CAUSE 2, DEPT 2.

CLASS NAME 139, Haz PLAN PROT 1/4, CON 7, DIV 25.

COVERS BLDG. R. P. 130.00. AMOUNT 10000. Oct. 14 '26 9.20.26 Tab. RATE Tab 1.30. Prem. 130.00. A. Prem. Aug. 1D28 Tab 130.40 Tab. 130.00. Date Paid 32.10 Sep. 1 20 D 32.

MOTOR NO. REPLACES.

Pay to ROSE M. ALLEN.

AGENT

BROKER R. F. Graves.

CM 20 BK Loss 9/25/28.

DEFENDANT'S EXHIIT NO. 22
ADMITTED

F. C. GRAVES Raymond F. Graves
Real Estate, Loans, Insurance
Filer, Idaho.

September 21, 1926.

Reynolds Bros.
Twin Falls, Idaho.

Gentlemen:

Inclosed find renewal certificate for five year policy covering the garage and dance hall building here. There has been a slight reduction in the premium on this building and the slip has been written under the reduced rate. The premium due on this is $130.00.

Very truly yours,
(Sgd.) Raymond F. Graves

(Following written in ink in lower left hand corner:)

This policy has
been placed wf. (undecipherable)
Hdw. Mutual—
Please cancel
R. A. R.

(Following attached to above Exhibit)

RENEWAL CERTIFICATE

Policy No. ID-601926.
Renewed for one year to 9-20-27.

(DEFENDANT'S EXHIBIT NO. 22)
Amount $10,000.00 Rate $1.30. Premium $130.00
General Insurance Company of America.

DEFENDANT'S EXHIBIT NO. 23
ADMITTED

CHAPTER 48
(S. B. NO. 128)

Be it Enacted by the Legislature of the State of Idaho:

SECTION 1. Any person, persons, copartnership, company, companies, or insurer legally authorized to transact the business of insurance and a resident within this state, or any person who is a resident of this state and not an officer or employee of any insurance company may organize or maintain a rating bureau, for the purpose of inspecting and surveying the various municipalities and fire hazards in this state, and the means and facilities for preventing, confining and extinguishing fires, for the purpose of estimating and promulgating fair and equitable rates for insurance, and to furnish to municipalities, owners of property, insurance companies or agents information as to rates and advice as to measures to be adopted for the reduction of fire hazards on property within this state, and lessening the cost of insurance thereon. Every such rating bureau shall establish and maintain an office in this state. The business of conducting a rating

bureau in this state is public service in character and shall be conducted without profit to any party, except that fair and reasonable compensation shall be paid for all service actually rendered and necessary to the business. Every rating bureau shall, before publishing or furnishing any rates, file in the office of the director of insurance of the department of finance its rating schedules, and shall not deviate therefrom until amended or corrected rating schedules have been filed in the office of the director of insurance. The services of such rating bureaus shall be available, equally and ratably in proportion to the service rendered, to any and all insurance companies, agents and property owners. The office of rating bureaus shall be open during the regular office hours for the information of the citizens of this state.

SEC. 2. Each rating bureau now or hereafter organized and maintained in this state shall keep an accurate and complete record of all work performed by it, in surveying, estimating, and promulgating rates and furnishing information in respect thereto, which record must show all receipts and disbursements and be open during the regular office hours to the inspection and examination of the director of insurance, his deputy or examiner, who may at any time review such rate or rates to determine whether the schedule has been properly applied.

Sec. 3. The director of insurance of the department of finance may address inquiries to any individual, association or bureau which is or has been engaged in making rates or estimates for rates for fire insurance upon property in this state, in relation to his or its organization maintenance or operation or any other matter connected with his or its transactions, and it shall be the duty of every such individual, association or bureau, or some officer thereof, to reply promptly and fully to such inquiries in writing.

Sec. 4. The director of insurance of the department of finance shall have the power to examine any such rating bureau as often as he deems it expedient to do so, and shall do so not less than once every three years. A report thereof shall be filed in his office and statement in regard to each such examination shall be made in the annual report of the department of finance.

Sec. 5. No fire insurance company or other insurer against the risk of fire or lightning, nor any rating bureau shall fix or charge any rate for insurance in this state which discriminates unfairly between risks of essentially the same physical, climatic or other hazards or which discriminates unfairly in the application of like charges and credits between risks of essentially the same physical, climatic or other hazards and having substantially the same degree of protection against fire. Whenever

it is made to appear to the satisfaction of the director of insurance of the department of finance that such discrimination exists, he may, after full hearing either before himself or before any salaried employe of the department whose report be may adopt, order such discrimination removed; and the insurance companies and/or rating bureau or bureaus affected thereby shall comply with such order within thirty days after service of such order upon them; * * * such insurance companies and/or rating bureau or bureaus shall not remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it is made to appear to the satisfaction of the director of insurance that such increase is justifiably based upon conditions existing at the time of the hearing. The insurance companies and/or rating bureau or bureaus c h a r g e d with discrimination or involved therein shall be given at least five days written notice of hearing, which shall set forth with reasonable certainty the discrimination charged. If the director of insurance finds that the discrimination exists, and orders its removal he shall find and state in his order whether an increase in any rate involved is justified. Any insurance company and/or rating bureau or bureaus affected by such order may appeal therefrom to the district court of the State of Idaho for Ada County within thirty days after service of the order, by serving upon the director of insurance of the department of finance,

and filing with the clerk of said court, a notice of appeal together with a copy of the order appealed from, a copy of the notice of hearing and an undertaking in the sum of $500.00 with one or more qualified sureties, conditioned to pay all costs that may be awarded against the appellant upon the appeal * * * The appeal shall be heard and tried in the manner provided by law for the trial of suits in equity. The notice of hearing shall be deemed a complaint and shall be deemed denied and no other pleading shall be required. If the court sustains the charge of discrimination, it shall determine also by its order or decree whether such discrimination may be removed by increasing any rate involved. Either the director of insurance or any insurance company or rating bureau affected by the order or decree of the court may appeal therefrom to the supreme court of the State of Idaho in the same manner that appeals may be taken from other final judgments.

Sec. 6. Every rating bureau operating under the provisions of this act shall appoint a person with the title of "Chief Examiner," who shall be experienced in insurance matters, but such person shall not in any way be engaged in making rates for the bureau and shall be held responsible for the examination of all applications and daily reports submitted to such bureau and shall report to the director of insurance of the department of finance any and all cases in which companies or agents discrim-

inate on risks of essentially the same hazard or deviate from the schedules on file in the department, and any and all violations of this act, but he shall not make or keep any copy or copies of such applications or daily reports or record thereof except to indorse his approval thereon if correct, or attach such memoranda or entries as may be necessary to show what, if any, errors exist; keeping copies thereof, for the purpose of checking errors and releasing memoranda thereof when corrected. Upon the failure of such person to report promptly any violation of this law he shall be liable to a penalty of ten dollars for each violation.

Sec. 7. All applications for fire insurance and daily reports of policies issued by every fire insurance company holding membership in a rating bureau on risks in this state shall be submitted to the chief examiner of such rating bureau, for the purpose of examination to ascertain if there are any errors in the forms of policy or rate of premium charges therefor, who shall indorse his approval on such application or daily report if correct; withholding his approval if incorrect as to the form used or rate charged, such as to constitute a discrimination in rate, advising the company and the agent submitting same, showing wherein the error exists and if correction thereof is not made within a reasonable time he shall report the same with the name of the company and the agent to the director of insurance of the department of finance.

Sec. 8. Every fire insurance company or other insurer authorized to effect insurance against the risk of damage by fire or lightning in this state shall, before being permitted to write such insurance in this state, file with director of insurance of the department of finance a schedule of rates, unless such company or other insurer has given notice to the department of its acceptance of the schedule of rates filed by a rating bureau of which such company or other insurer is a member, and any company or other insurer filing such schedule of rates, or giving notice to the director of insurance of the acceptance of the schedule filed by a rating bureau, shall not deviate therefrom until corrected or amended schedules shall have been filed in the office of the director of insurance of the department of finance, and every company or other insurer not belonging to a rating bureau and having filed its individual schedule as herein required, shall keep a complete record of all applications and daily reports received by it, showing the same to have been written in conformity with its rating schedule filed with the director of insurance and promptly notify its agents or other representatives of any errors in the applications or the daily reports written or submitted by them, and shall report to the director of insurance any failure upon the part of such agents or other representatives to make such corrections in the same manner and with the same penalties for violation as is required of the chief examiner

of a rating bureau, which record of its business shall at all times be open to inspection by the director of insurance, his deputy or examiner. No such insurer shall be a member of more than one rating bureau for the purpose of rating the same class or classes of risks, nor file, publish or use the rates or rating schedules of any rating bureau organized or maintained under the provisions of this act, unless such insurer is a member thereof. Every insurer that has given notice to the director of insurance of the department of finance of its acceptance of the schedule of rates filed by a rating bureau of which it is a member shall, thirty days in advance of any variation by it from the bureau rate, filed with the said director or insurance and rating bureau, the variation from the bureau rate which shall be uniform throughout the territorial classification and every such insurer shall be permitted to make uniform variations from the bureau rate.

Sec. 9. Except as contained in the policy and the usual agreement for other insurance, no such insurance company or insurer or rating bureau shall make any contract or agreement with any person insured or to be insured with regard to the time any rate shall remain in effect, or that the whole or any part of any insurance shall be written or placed with any particular company, agent or any group of companies, insurers or agents.

Sec. 10. A rating bureau shall admit to membership any authorized insurer applying therefor. Ex-

penses of the bureau shall be shared by each member in proportion to the gross premiums received by it during the previous year on business rated by such bureau, deducting premiums and dividends returned to policy holders, to which may be added a reasonable annual fee.

Sec. 11. Every rating bureau or insurer engaged in making rates or estimates for rates for fire insurance on property in this state shall inspect every risk specifically rated by it, making a written survey of such risk, which shall be filed as a permanent record in the office of such rating bureau or insurer, and a copy of such survey shall be furnished to the owner of the property surveyed upon request. Such insurance companies and/or rating bureau or bureaus shall also provide such means as may be approved by the director of insurance of the department of finance, whereby any person or persons affected by such rate or rates may be heard before the proper executive of such companies and/or rating bureau or bureaus on an application for a change in such rate or rates.

Sec. 12. Every insurance company doing business in this state shall file in the office of director of insurance of the department of finance its short rate table for cancellation of policies and shall not deviate therefrom until an amendment shall have been filed with the director of insurance, nor shall any insurance company file a schedule of rates of any rating bureau less a certain percentage of the

rates estimated and promulgated by said bureau when making insurance.

Sec. 13. Every corporation, association, bureau or person failing to comply with the requirements of this act or knowingly and wilfully violating any of its provisions, shall be deemed guilty of a misdemeanor, and upon conviction be fined not to exceed one hundred dollars for each offense, and any license or certificate of authority granted by the director of insurance of the department of finance to the offender may be suspended or revoked.

Sec. 14. The provisions of this act shall not apply to any county mutual insurance company; Provided, That such county mutual company upon filing with any such bureau its application for membership and agreeing to become subject to the provisions of this act shall be entitled to membership in such bureau and thereupon become subject to the provisions of this act.

Approved February 23, 1923.

CERTIFICATE

This is to certify that the foregoing bill of exceptions tendered by the defendant is true and correct; that it contains all of the evidence in narrative form introduced at the trial, together with all of the exhibits offered and admitted in evidence; also the memorandum opinion filed, the judgment, stipulation of counsel dated and filed July 11, 1929, ex-

tending time to August 1, 1929, within which counsel for defendant may serve a draft of the proposed bill of exceptions, order dated and entered July 11, 1929, extending time to August 1, 1929, within which counsel for defendant may serve a draft of proposed bill of exceptions, motion of defendant filed July 11, 1929, requesting special findings, objection of plaintiff to defendant's motion requesting special findings, order dated and entered July 26, 1929, denying defendant's request for special findings, order dated and entered July 26, 1929, extending time to August 12, 1929, within which counsel for defendant may serve a draft of proposed bill of exceptions, request in writing for a declaration of law in favor of defendant and against the plaintiff, dated July 29, 1929, filed July 30, 1929, plaintiff's objections in writing to granting defendant's request for a declaration of law in its favor filed July 30, 1929, order of the court dated and entered July 30, 1929, denying defendant's request for a declaration of law in its favor, and allowing defendant an exception to the ruling of the court, and fixing time up to August 12, 1929, within which to serve on attorneys for the plaintiff a draft of the proposed bill of exceptions, a nunc pro tunc order correcting judgment dated and entered July 30, 1929, defendant's petition for new trial served upon counsel for the plaintiff July 31, 1929, filed August 1, 1929, order dated and entered August 8, 1929, extending time to August 15, 1929,

within which counsel for defendant may serve a draft of proposed bill of exceptions herein, order denying defendant's petition for new trial dated and entered September 6, 1929, defendant's exception to the ruling of the court denying defendant's petition for a new trial, together with the proposed amendments filed on behalf of the plaintiff to the bill of exceptions tendered by defendant, comprising thirty-five paragraphs, all of which are by the court denied and overruled, with the exception of paragraph 2, which is allowed, and exceptions are allowed in favor of plaintiff on the court's ruling upon each and all of the proposed amendments to the bill of exceptions tendered by defendant except proposed amendment No. 2, upon the grounds as stated in the respective proposed amendments.

And I hereby approve, settle and allow the same as a full, true and correct bill of exceptions herein.

Dated: Boise, Idaho, September 6th, 1929.

CHARLES C. CAVANAH
District Judge

Filed Sept. 6, 1929.

(Title of Court and Cause)
No. 1393

PETITION FOR APPEAL

The above-named defendant, General Insurance Company of America, a corporation, feeling aggrieved by the judgment made and entered on July

2nd, 1929, in favor of the plaintiff, Rosa M. Allen, and against the defendant, General Insurance Company of America, a corporation, for the sum of Ten Thousand ($10,000.) Dollars principal, together with interest and costs, does hereby appeal from said judgment and from the order of the court dated and signed July 30th, 1929, denying the defendant's request for a declaration of law; "that under the pleadings, contract of insurance and evidence, plaintiff is not entitled to recover, and the decision and judgment of the court is in favor of the defendant," and from the order of the court dated and signed on September 6th, 1929, denying defendant's petition for a new trial, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith; and your petitioner prays that this appeal may be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said judgment and orders were based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner, General Insurance Company of America, desiring to supersede the execution of said judgment directing the payment of Ten Thousand ($10,000.) Dollars, with interest and costs, to the plaintiff, Rosa M. Allen, by the defendant, General Insurance Company of America, as set forth in said judgment, tenders bond in such

amount as the court may require for such purpose and prays, that with the allowance of the appeal, a supersedeas may be issued.

Dated this 23rd day of September, 1929.

JAMES R. BOTHWELL
W. ORR CHAPMAN
Attorneys for Petitioner
Residence, Twin Falls, Idaho.

Service of the within and foregoing Petition for Appeal is hereby acknowledged this 24th day of September, 1929, by receipt of copy thereof.

W. D. GILLIS
Residing at Boise, Idaho.
JOHN W. GRAHAM
Residing at Twin Falls, Idaho.
Attorneys for Plaintiff.

Filed Sept. 24, 1929.

(Title of Court and Cause)

No. 1393

ASSIGNMENT OF ERRORS

And now comes the defendant, General Insurance Company of America, a corporation, and having presented an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment made and entered in the above-entitled

cause on July 2nd, 1929, and from the order of the court dated and signed July 30th, 1929, denying defendant's request for a declaration of law "that under the pleadings, contract of insurance, and evidence, plaintiff is not entitled to recover, and the decision and judgment of the court is in favor of the defendant," and from the order of the court dated and signed on September 6th, 1929, denying defendant's petition for a new trial, and says that said judgment and orders, and each of them, made and filed by the court in said cause, are erroneous and unjust to this defendant and particularly in this:

1. Because the court erred in finding and adjudging generally for the plaintiff and against the defendant.

2. Because the said judgment is contrary to law.

3. Because the said judgment is contrary to the evidence.

4. The court erred in permitting the witness R. A. Reynolds to answer the following question over defendant's objection:

> "Q. At the time of the execution of the note and mortgage was there any agreement between you and Mrs. Allen in regard to carrying insurance on the property?
>
> A. Yes.

MR. BOTHWELL: I object to that. It is now shown that there was a mortgage, an instrument in writing, and that would be the best evidence.

THE COURT: The mortgage probably contained the condition to the insurance.

MR. GRAHAM: I do not think it contained the requirement as to the insurance, but at the time the note and mortgage were executed and contemporaneously with it, he agreed to give additional security in the way of insurance.

THE COURT: He may answer.

A. I had an agreement with Mrs. Allen that I would carry $10,000, insurance at all times on the building at least.

Q. This policy was taken out in accordance with that agreement?

A. With the mortgage clause attached to it, yes."

5. The court erred in sustaining objections of plaintiff to questions asked the witness and plaintiff, Rosa M. Allen, on cross-examination, as follows:

"Q. You were talking with Mr. Reynolds about collecting interest on the notes?

A. Yes.

Q. Did you say anything to him about insurance at that time?

cause on July 2nd, 1929, and from the order of the court dated and signed July 30th, 1929, denying defendant's request for a declaration of law "that under the pleadings, contract of insurance, and evidence, plaintiff is not entitled to recover, and the decision and judgment of the court is in favor of the defendant," and from the order of the court dated and signed on September 6th, 1929, denying defendant's petition for a new trial, and says that said judgment and orders, and each of them, made and filed by the court in said cause, are erroneous and unjust to this defendant and particularly in this:

1. Because the court erred in finding and adjudging generally for the plaintiff and against the defendant.

2. Because the said judgment is contrary to law.

3. Because the said judgment is contrary to the evidence.

4. The court erred in permitting the witness R. A. Reynolds to answer the following question over defendant's objection:

> "Q. At the time of the execution of the note and mortgage was there any agreement between you and Mrs. Allen in regard to carrying insurance on the property?
>
> A. Yes.

MR. BOTHWELL: I object to that. It is now shown that there was a mortgage, an instrument in writing, and that would be the best evidence.

THE COURT: The mortgage probably contained the condition to the insurance.

MR. GRAHAM: I do not think it contained the requirement as to the insurance, but at the time the note and mortgage were executed and contemporaneously with it, he agreed to give additional security in the way of insurance.

THE COURT: He may answer.

A. I had an agreement with Mrs. Allen that I would carry $10,000, insurance at all times on the building at least.

Q. This policy was taken out in accordance with that agreement?

A. With the mortgage clause attached to it, yes."

5. The court erred in sustaining objections of plaintiff to questions asked the witness and plaintiff, Rosa M. Allen, on cross-examination, as follows:

"Q. You were talking with Mr. Reynolds about collecting interest on the notes?

A. Yes.

Q. Did you say anything to him about insurance at that time?

MR. GRAHAM: She has already answered that.

THE COURT: She said she didn't recall. Sustained.

Q. Well, do I understand by that that you have talked to him about it at that time?

A. No, sir, I did not.

Q. You looked in your box in 1927 to see whether this policy was there?

MR. GRAHAM: I object to that as immaterial and not proper cross-examination.

THE COURT: Sustained.

Q. Why didn't you inquire from Mr. Reynolds about the policy at that time?

MR. GRAHAM: I object to that as immaterial and not proper cross-examination.

THE COURT: What is the purpose why she didn't do this? I cannot see the idea unless it is going to lead up to something else. I cannot see where it is competent now as to why she did not do this or do that. She has testified as to what she actually did. I can see how it might be competent. I don't know what you may be leading up to. It might be material under certain circumstances to ask that question. I think I will let her answer the question.

THE COURT: He is asking why you didn't inquire from Mr. Reynolds about this policy in 1927. Any reason why you didn't do it, if you had any?

A. I never thought of asking him.

THE COURT: That other question I think I will allow you to answer that.

MR. BOTHWELL: Will you read the question, Mr. Reporter? (Question read by Reporter)

Q. Why didn't you look in your box in 1927 to see whether this policy was there?

A. I just never thought of looking, that was all.

Q. You were leaving that matter, the question of insurance, to Mr. Reynolds, as I understand it?

A. Yes."

6. The court erred in sustaining plaintiff's objection to the following question asked of the witness R. A. Reynolds on cross-examination on rebuttal:

"MR. BOTHWELL: Q. Did you have any hardware in this building when it burned?

A. Yes, we had some hardware but not a great deal.

Q. What hardware did you have?

MR. GRAHAM: I object to that as not proper examination upon rebuttal.

THE COURT: Sustained."

7. Because the judgment is not supported by the pleadings.

8. Because under the pleadings, contract of insurance and evidence, the defendant was entitled to

a declaration of law as follows: "The court declares the law to be that under the pleadings, contract of insurance and evidence in this case the plaintiff is not entitled to recover against the defendant, General Insurance Company of America, and the decision and judgment of the court is in favor of the defendant."

9. Because the evidence shows without contradiction that plaintiff appointed R. A. Reynolds as her agent, with full power to insure the property in question, to select the insurer and to surrender the policy in question for cancellation to the agent of the defendant, and the uncontradicted evidence shows that R. A. Reynolds, the agent of plaintiff, surrendered the policy in question to defendant's agent for cancellation and notified defendant's agent in writing that the insurance upon the property had been placed with the Hardware Mutual Insurance Company.

10. Because the evidence shows without contradiction that plaintiff knew, or could have known, by the exercise of ordinary care that her agent, R. A. Reynolds, had not placed the policy in question in her safety deposit box in the First National Bank of Filer, Idaho, and that plaintiff allowed the policy to remain out of the safety deposit box and under the control of her agent, R. A. Reynolds, and thereby placed it within the control of her said agent to surrender the policy for cancellation.

11. Because it is shown by the evidence, without contradiction, that plaintiff had no dealings whatever with defendant except through R. A. Reynolds, and plaintiff having received the benefits of the insurance for the years 1924 and 1925 through the contract of insurance secured by the said R. A. Reynolds, is now estopped from denying that Reynolds was her agent, and was acting within the scope of his authority when he surrendered the policy for cancellation.

12. Because the uncontradicted evidence shows that the immediate cause of cancellation of the policy was the failure of Reynolds to place the policy in the safety deposit box in the First National Bank of Filer, but on the contrary retained the policy in his possession and thereafter surrendered the policy to defendant's agent, with a statement in writing that the policy had been replaced with the Hardware Mutual Insurance Company, and the uncontradicted evidence further shows that plaintiff opened the safety deposit box and knew, or by the use of her natural senses could have known that the policy was not, in fact, in the safety deposit box, and plaintiff knew at that time that the mortgagors were in default upon the mortgage and consequently plaintiff is estopped from contending that the policy was not surrendered for cancellation with her knowledge and consent.

13. Because it appears from the evidence, with-

out contradiction, that the policy was cancelled because Reynolds, agent of the plaintiff, failed to place the policy with the First National Bank of Filer, and thereafter notified defendant's agent in writing that the policy had been replaced with the Hardware Mutual Insurance Company, and that plaintiff, by the use of her natural senses, could have known that the policy was not, in fact, in her safety deposit box in the First National Bank of Filer, and plaintiff is therefore estopped from contending that the policy was not canceled with her knowledge and consent.

14. Because the uncontradicted evidence shows that the act of R. A. Reynolds, in notifying the agent of the defendant, that the policy had been replaced with the Hardware Mutual Insurance Company, was not "an act of neglect of the mortgagor," whereby the policy was invalidated within the meaning of the mortgagee clause attached to the policy, but was an act in furtherance of the agreement between plaintiff and R. A. Reynolds, that Reynolds would keep the building insured, select the insurer, pay the premiums, replace the insurance in a company to the mutual advantage of the plaintiff and mortgagors and place the policy in the First National Bank at Filer, Idaho.

15. Because it is shown by the uncontradicted evidence that prior to the loss, plaintiff ratified the act of R. A. Reynolds in permitting the policy to be cancelled.

16. Because it is shown by the uncontradicted evidence that one of the mortgagors, R. A. Reynolds, was the agent of plaintiff, and that plaintiff's said agent, R. A. Reynolds, notified the defendant's agent in writing that the policy had been replaced with the Hardware Mutual Insurance Company, and plaintiff is chargeable with the knowledge and acts of her agent in the premises.

17. Because it is shown by the uncontradicted evidence that the term of insurance under the policy in question was from 12 o'clock Noon, on September 20th, 1924, to 12 o'clock Noon, September 20, 1925, and from 12 o'clock Noon, September 20, 1925, to 12 o'clock Noon, September 20, 1926, and that said policy of insurance expired at Noon on September 20, 1926, and was not renewed for the year September 20, 1926, to September 20, 1927, and was not in effect on the date of the loss by fire of the building in question.

18. The court erred in overruling defendant's demurrer to plaintiff's complaint.

19. The court erred in ordering judgment entered in favor of plaintiff and against defendant without containing a provision to the effect, "that upon payment of said judgment to the mortgagee the defendant shall, to the extent of such payment, be subrogated to all the rights of the mortgagee, and that the defendant shall receive a full assignment, and transfer of the mortgage and all other securities held by plaintiff" as provided in condition

5 of the mortgage clause attached to the insurance policy in question.

WHEREFORE, the defendant prays that the judgment of the District Court may be reversed.

JAMES R. BOTHWELL
W. ORR CHAPMAN
Attorneys for Defendant,
Residing at Twin Falls, Idaho.

Service of the within and foregoing Assignment of Errors is hereby acknowledged this 24th day of September, 1929, by receipt of copy thereof.

W. D. GILLIS
Residing at Twin Falls, Idaho.
JOHN W. GRAHAM
Residing at Boise, Idaho,
Attorneys for Plaintiff.

Filed Sept. 24, 1929.

(Title of Court and Cause)

No. 1393

ORDER ALLOWING APPEAL

This cause coming on now to be heard this 24th day of September, 1929, upon the petition of defendant for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the court being fully advised, it is ORDERED that defend-

ant's petition for appeal be granted, and that the appeal be allowed as prayed for, the same to operate as a supersedeas upon the petitioner, General Insurance Company of America, filing a bond in the sum of $12,000.00, with good and sufficient sureties, conditioned as required by law, the same to serve as a supersedeas bond and a bond for costs and damages on appeal.

Dated this 24th day of September, 1929.

CHARLES C. CAVANAH
Judge

Filed Sept. 24, 1929.

(Title of Court and Cause)

BOND ON APPEAL FOR SUPERSEDEAS AND COSTS

KNOW ALL MEN BY THESE PRESENTS, That we, GENERAL INSURANCE COMPANY OF AMERICA, as principal, and AETNA CASUALTY AND SURETY COMPANY, as surety, are held and firmly bound unto the plaintiff in the above-entiled action in the just and full sum of $12,000.00, for the payment of which well and truly to be made, we bind ourselves, and each of us, and our, and each of our heirs, executors, administrators, successors and assign, firmly by these presents.

Sealed with our seals and dated this 25th day of September, 1929.

The condition of this obligation is such, that,

WHEREAS, the General Insurance Company of America, defendant, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment made and entered in this cause, on July 2nd, 1929, in favor of the plaintiff and against the defendant, and from the orders named in defendant's petition for an appeal:

NOW, THEREFORE, If the above named defendant and appellant, shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, otherwise the same shall be, and remain, in full force and virtue.

IN WITNESS WHEREOF, the said principal has caused its name to be hereunto subscribed by its duly authorized attorneys of record, and the said surety has caused its name to be hereunto subscribed by its duly authorized officers, and its corporate seal affixed the day and year first above written.

GENERAL INSURANCE COMPANY,
OF AMERICA,

By JAMES R. BOTHWELL
W. ORR CHAPMAN
Its Attorneys.

AETNA CASUALTY AND SURETY
(Seal) COMPANY

Surety

By J. Peuover
Resident Vice-President

Attest:
M. E. Gealy
Resident Assistant Secretary

The foregoing Bond is hereby approved to operate as a bond for costs and as a supersedeas.

Dated this 25th day of September, A. D. 1929.

CHARLES C. CAVANAH
Judge

Filed Sept. 25, 1929.

(Title of Court and Cause)

CITATION

TO: ROSA M. ALLEN, PLAINTIFF:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the state of California, within thirty (30) days from the date of this writ, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the District of Idaho, Southern Division, wherein the General

Insurance Company of America is appellant and you are respondent, to show cause, if any there be, why the judgment and orders in said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

WITNESS The Honorable Charles C. Cavanah, United States District Judge for the District of Idaho, this 24th day of September, A. D. 1929, and of the Independence of the United States the One Hundred and Fifty-third Year.

CHARLES C. CAVANAH

(Seal) *Judge*

Attest:

W. D. McREYNOLDS, Clerk.

Service of the foregoing Citation and receipt of copy thereof admitted by the undersigned on the 24th day of September, A. D. 1929.

W. D. GILLIS
JOHN W. GRAHAM
Attorneys for Plaintiff,
Residence: Boise and Twin Falls, Idaho.

Filed Sept. 24, 1929.

(Title of Court and Cause)

No. 1393

PRAECIPE FOR TRANSCRIPT ON APPEAL

TO: W. D. McREYNOLDS, CLERK OF THE ABOVE-ENTITLED COURT:

You will please prepare the record on appeal of the defendant, General Insurance Company of America, taken in the above-entitled cause from the judgment made and entered on July 2nd, 1929, and the orders dated and signed July 30, 1929, and September 6th, 1929, such record to consist of the following:

1. Complaint.
2. Demurrer to Complaint.
3. Order overruling demurrer to the complaint.
4. Stipulation in writing waiving jury.
5. Answer as amended.
6. Memorandum decision of the court filed July 1st, 1929.
7. Judgment.
8. Order amending judgment Nunc Protunc upon the Court's own motion.
9. Bill of Exceptions settled by the court under date of September 6, 1929.
10. All papers filed in connection with this appeal, namely, Petition for Appeal,
    Assignment of Errors,
    Order Allowing Appeal,
    Bond on Appeal, supersedeas and for costs,
    Citation.

In preparing the above record you will please omit the title of all pleadings except the first paper named above, but in lieu thereof insert the words "Title of Court and Cause," to be followed by the name of the pleadings or instrument.

You will also please omit the verification of all pleadings, but in lieu thereof insert wherever the pleading is verified the words "duly verified."

Dated this 23rd day of September, 1929.

JAMES R. BOTHWELL
W. ORR CHAPMAN
Attorneys for Defendant,
Residing at Twin Falls, Idaho.

Service of the above Praecipe and receipt of a copy thereof is acknowledged this 24th day of September, 1929.

W. D. GILLIS
Residing at Boise, Idaho.
JOHN W. GRAHAM
Residing at Twin Falls, Idaho.
Attorneys for Plaintiff.

Filed Sept. 24, 1929.

(Title of Court and Cause)

CLERK'S CERTIFICATE

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do

hereby certify the foregoing transcript of pages numbered from one to 233 inclusive, to be full, true, and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as by the praecipe herein directed.

I further certify that the cost of the record herein amounts to the sum of $285.10, and the same has been paid by the appellants.

Witness my hand and the seal of said Court this 9th day of November, 1929.

W. D. McREYNOLDS, Clerk

(Seal)